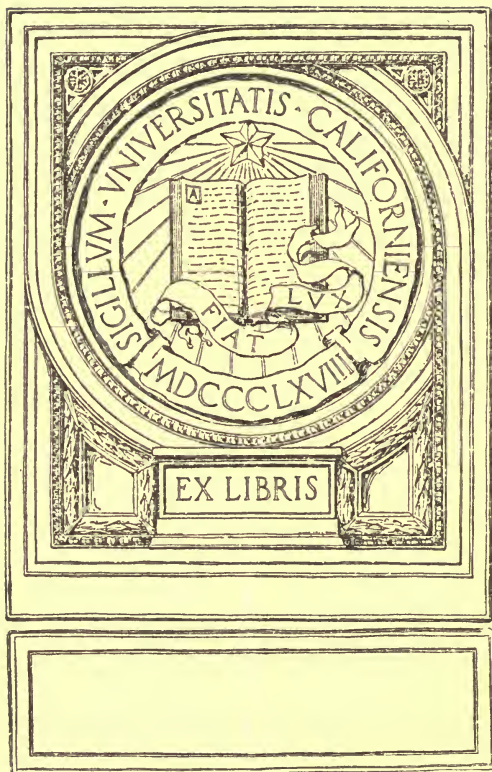


YB 66702

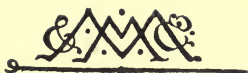






Local Government

THE ENGLISH CITIZEN : *HIS RIGHTS AND RESPONSIBILITIES*



MACMILLAN AND CO., LIMITED

LONDON • BOMBAY • CALCUTTA

MELBOURNE

THE MACMILLAN COMPANY

NEW YORK • BOSTON • CHICAGO

DALLAS • SAN FRANCISCO

THE MACMILLAN CO. OF CANADA, LTD.

TORONTO

LOCAL GOVERNMENT

BY

WILLIAM BLAKE ODGERS, M.A., LL.D., K.C.

OF TRINITY HALL, CAMBRIDGE, AND THE MIDDLE TEMPLE

HON. LL.D. OF TUFTS COLLEGE, MASSACHUSETTS

DIRECTOR OF LEGAL STUDIES AT THE INNS OF COURT
AND RECORDER OF PLYMOUTH

SECOND EDITION

BY THE AUTHOR

AND

EDWARD JAMES NALDRETT

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW

ONE OF THE JOINT AUTHORS OF A WORK ON THE 'LONDON GOVERNMENT ACT 1899'

AND ONE OF THE JOINT EDITORS OF WORKS ON 'POOR LAW ORDERS'

AND 'THE PUBLIC HEALTH (LONDON) ACT 1891'



MACMILLAN AND CO., LIMITED

ST. MARTIN'S STREET, LONDON

1913

JS3113
.03
1913

COPYRIGHT

First Edition printed 1899

Reprinted, with alterations and additions, 1901

Second Edition 1907, 1909

Reprinted (with Appendix) 1913

1913

ALBANY, N. Y.

PREFACE

TO THE SECOND EDITION

SINCE the first edition of this book appeared in 1899, several important statutes have been passed which affect Local Government in England and Wales. Chief among these are the London Government Act, 1899, and the Education Act of 1902. It was therefore necessary, in preparing the present edition, to entirely rewrite the chapter on the Education Authority, and to make considerable additions, especially to the chapter on the Metropolis. The rest of the book has been thoroughly revised and brought up to date.

The publication of this volume has been delayed for some months in the hope that we might be able to record in it a final settlement of the disputes and difficulties which appear to surround all questions connected with National Education. But this hope has not been realised.

W. B. O.
E. J. N.

TEMPLE, *January* 1907.



Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

CONTENTS

CHAPTER I

INTRODUCTORY

Sphere of Local Government—Constitutional Importance—Comparison of Local and Central Government in England—Position of Women—Representation and Taxation—Interaction of Local and Central Government	1
--	---

CHAPTER II

GENERAL VIEW OF ENGLISH LOCAL GOVERNMENT

Chaos of Local Authorities in 1883—Early Local Government—Confusion in the Nineteenth Century—The Local Government Acts, 1888 and 1894—Simplification of Areas—Local Finance	14
--	----

CHAPTER III

THE PARISH

The Township—The Manor—The Ancient Parish—Different Kinds of Parishes—The Modern Civil Parish—The Overseers—The Vestry—The Local Government Act, 1894—The Parish Meeting—The Parish Council—The Ecclesiastical Parish	35
---	----

CHAPTER IV

THE BOROUGH

English Towns—Creation of New Boroughs—History of the Boroughs—The Municipal Corporations Act—Constitution of the Borough or City—Borough Officers—Functions of the Council—Borough Finance—Central Control . . . 69

CHAPTER V

THE UNION

History of Unions—The Guardians of the Poor—Their Election—Their Duties—Central Control 103

CHAPTER VI

THE (COUNTY) DISTRICT

County Districts—Necessity and Province of Sanitary Legislation—History of Sanitary Legislation—Its Results—Sanitary Districts—District Councils: their Constitution, Powers, Officers, and Finance—Central Control—Port Sanitary Authorities 121

CHAPTER VII

THE EDUCATION AUTHORITY

National Education—Elementary Schools—Religious Instruction, "Conscience Clause," "Cowper-Temple Clause"—School Boards and their Work—Voluntary Schools—Education Act, 1902—Higher Education—Elementary Education—Aid Grant—Education (London) Act, 1903—Education Bill of 1906 149

CHAPTER VIII

THE HIGHWAY AUTHORITY

Highways—Repair of Highways—Main-roads—Bridges—Highway Areas and Authorities—Bridle-paths, Footpaths, etc.—Roadside Strips	168
--	-----

CHAPTER IX

THE BURIAL AUTHORITY

The Parish Churchyard—The Cemetery—The Burial-ground—Burial Boards—Local Government Act, 1894	188
---	-----

CHAPTER X

THE COUNTY

The Administrative County—History of the Shire—Divisions of the County—Its Officers: the Sheriff, the Lord-Lieutenant, the Coroner, and the Justices of the Peace—The County Council: its constitution and powers—County Finance	194
--	-----

CHAPTER XI

THE METROPOLIS

The Administrative County of London—Confusion of Areas and Authorities prior to 1888—History of London and its Suburbs—The Metropolitan Board of Works—The London County Council—Metropolitan Borough Councils—The City of London—The Local Education Authority—Metropolitan Poor-law Authorities—Metropolitan Water Board, etc. . . .	217
--	-----

CHAPTER XII

CENTRAL CONTROL

Local Self-government—Necessity for Central Control—The Board of Trade—The Board of Agriculture and Fisheries—The Board of Education—The Local Government Board—Its Functions—Advice—Administrative Control—Financial Control—Audit—Limits of Central Control	240
---	-----

APPENDIX A

Table showing the Conditions under which Local Elections were conducted in 1878	269
---	-----

APPENDIX B

Cinematograph Exhibitions	272
Education	272
Food	272
Married Women	273
Meals for Children	273
Port of London Authority	273
Press	273
Road Improvement	274
Shops	274
Town Planning	274

INDEX	275
-----------------	-----

LOCAL GOVERNMENT

CHAPTER I

INTRODUCTORY

Sphere of Local Government—Constitutional Importance—Comparison of Local and Central Government in England—Position of Women—Representation and Taxation—Interaction of Local and Central Government.

THE object of the present volume is to describe the existing machinery of local government in England, and to give a short account of those matters which are administered locally but which do not form the subject of separate volumes of the English Citizen Series. And, as no English institution is intelligible apart from its history, a brief historical sketch has been included in the description of the various local institutions which in the aggregate constitute our system of local government.

By local government, as opposed to central government, is meant the administration of those matters which concern only the inhabitants of a particular district or place, and which do not directly affect the nation at large. It is with the duty of an English citizen to his

neighbours or his neighbourhood that local government is concerned. It is his duty to succour and provide for the poor and the helpless. The administration of the poor-law, the education of the children of the poor, and the provision of lunatic asylums, hospitals, and other aids for the sick, fall under this head. It is also his duty to create no nuisance—to do nothing himself and to permit nothing to be done on his premises by others which is injurious to health, or which interferes with the lawful enjoyment by any man of his own property. Fresh air, sound food, and good water are the essential conditions of public health. It is the business of the local government to see that the neighbourhood is supplied with pure water, that the food is unadulterated, that the air is uncontaminated, that streets are properly lighted, and that the roads are reasonably safe and sufficient.

As long as we keep to general principles, there is not much room for controversy as to the appropriate sphere of local government. The difficulty consists in the application of admitted principles to a concrete instance. Whatever be the constitution of a State, a vast amount of business must be locally administered. Such business may be dispatched either by the officers and nominees of the Central Government, or by the inhabitants of the particular district concerned. In England it is for the most part disposed of by the inhabitants of the particular local area or their representatives. This has ever been our prevailing system.

Constitutional writers lay great stress on the political importance of a vigorous system of local self-government,

which they regard as the chief corner-stone of political freedom. And no doubt it was in their local assemblies that our forefathers learnt those lessons of self-respect, self-help, and self-reliance, which have made the English nation what it is. But while all will admit that local institutions play a most important part in the life-history of a free State, the exact nature of that part is not so clear. Do free and autonomous local institutions create a spirit of freedom in the people at large which necessitates a constitutional central government, or does a constitutional government carried on by a free people necessarily generate a system of free local institutions? Which is cause and which is effect? Or are both constitutional government and healthy local institutions merely the outward and visible signs of a spirit of freedom animating the nation, and in their turn reacting on the national character? It is the old difficulty of *post hoc vel propter hoc*. This much, however, is certain: a very complete system of local self-government is compatible with an entire absence of political freedom. The history of India shows that self-governing local institutions, possessed of intense vitality, may exist apart from any form of representative government, and be successfully administered by a people who have no notion of political freedom.

Happily this has never been the case in England. Our local institutions have conduced, and still conduce, to political freedom. And our political institutions in no way trammel or endanger our local independence. The sphere of local government has not diminished; on the contrary it steadily increases. Legislation now is centrifugal rather than centripetal. Parliament

has found it impossible to cope with all its duties, and has been compelled to delegate large powers to local bodies. In one instance, however, a step has been taken in the contrary direction. This is in the case of prisons. Prisons were formerly managed by the local authorities. County prisons were under the control of the justices, and borough prisons under the control of the town councils. But by the Prisons Act of 1877 the management of all prisons was, after a prolonged controversy, transferred from the local authorities to the Central Government as represented by the Home Secretary. It was urged, in opposition to this Act, that prisons stood on precisely the same footing as workhouses and lunatic asylums, which are properly left to the management of local authorities. It was answered that criminal justice should, as far as possible, be administered throughout the land with absolute uniformity. Gaols are part of the machinery of criminal justice, and as long as they were administered by independent local bodies the requisite uniformity in carrying out sentences of imprisonment could not be obtained. This consideration carried the day, and in obedience to this principle the transfer was effected.

The object of this series of volumes is a practical one—namely, to give some information to an English citizen as to his actual rights and duties as such. In the next chapter an attempt will be made to lay before the reader a general view of our local institutions considered in the aggregate. In the succeeding chapters particular local areas, and the authorities which rule them, will be considered in detail. But first let us compare one or two of the salient features of local and

central government in England, and consider the points of similarity and contrast.

In the first place, our local institutions, like our political constitution, have developed spontaneously, and therefore irregularly. Formerly both alike bristled with anomalies. Even now, to every general proposition relating to either, there is a host of exceptions to puzzle the student and bewilder the citizen. Englishmen care little for regularity and form; they value utility more highly than symmetry. And indeed, where, as in England, government by party is a tradition, and every important measure proposed by the party in power is inevitably resisted by the party in opposition, symmetry becomes an unattainable ideal: laws are born in caution and shapen in compromise. We have had little artistic legislation since the time of Cromwell, because statesmen have not been in a position to carry premisses to their logical conclusions.

Subject to this general observation, it may be said that our local and our political institutions have developed very much along the same lines. In Saxon times, both were essentially democratic; later, both became more and more narrow and exclusive; and now at last in both the principle of representation reigns supreme. But it must not be assumed that such development was either harmonious or contemporaneous. Our local and political systems neither declined nor advanced together. Each grew up in its own way, with no direct reference to the other, though the same forces were at work in each case. The government of our counties became more and more aristocratic just at the time when our boroughs were acquiring the right to

send representatives to Parliament; and the administration of local affairs in our boroughs became more and more bigoted and exclusive after political freedom had been secured by the execution of Charles I. and the expulsion of his second son. Nor did our local institutions themselves grow up at the same pace side by side. Counties and boroughs were never in line. And the boroughs themselves never kept abreast with each other. None of our many boards and councils were elected on the same method or by the same class of electors.

In the political sphere, it seems only natural that the rights of the individual should often yield to rank and wealth and territorial influence. But one might have anticipated that in small areas, in the government of which only a few were concerned, no restriction would be placed on the working of the principle of representation. The contrary is the fact. Property has always had most weight in the sphere of local government. The franchise has been extended first for parliamentary purposes, and only afterwards for the election of local governing bodies. The Reform Act of 1832 was followed by the Municipal Corporations Act of 1835, and the Reform Act of 1885 preceded the Local Government Act of 1888, which for the first time admitted the principle of representative government in county affairs. While the plural vote, which was invented to give property a predominating voice in the administration of the poor-law and in all sanitary matters, lasted on till 1894.

What was "the plural vote"? At a parliamentary election, every man's vote is as good as his neighbour's. This was always so. The vote of the poorest man who

had the franchise was always equal in value to the vote of a Rothschild. But a contrary rule prevailed at an election of poor-law guardians or of a Local Board of Health. There a wealthy man had six votes to the poor man's one. Every owner of property and every ratepayer was entitled to vote, and he had from one to six votes according to the rateable value of his property. A rateable value of £50 or less gave one vote ; if over £50 but under £100 it carried two votes ; and so on, each additional £50 of value up to £250 gave an additional vote. Six votes was the maximum. But a resident owner might vote both as an owner and as a resident. Hence a man who resided in his own house might have as many as twelve votes, if the house was rated at £250 or upwards.

This plural vote existed only for local purposes. It was defended by Mill and others on the ground that the honest and frugal dispensation of money forms so much larger a part of the business of the local than of the national body, that there was justice as well as policy in allowing a greater influence to those who had a larger money interest at stake. Some political writers have detected, both in the political and in the local sphere, a tendency to substitute for the good old rule that representation should go along with taxation, a new maxim that representation should be universal, but that taxation should be limited to the classes enjoying a marginal superfluity of wealth. And a fear has been expressed in some quarters that, as the voting power extends downwards in the social scale, both political and local government may become concentrated in the hands of those who have but scant personal

motive for economy. There may be at the present moment some ground for this apprehension, but formerly, at all events, the danger was rather the other way; representatives were returned pledged to injurious economy; necessary work was neglected, and local improvement stopped. Besides, all local governing bodies are subject, first, to the supremacy of Parliament, which could in theory end them all at a stroke; secondly, to the common law, and especially to the statute book, which contains their written constitutions; and, thirdly, to the controlling action of the various departments of the Central Government. Surely, with such powerful "engines at the door," free scope might have been allowed to the representative principle in the sphere of local government. The plural vote (except in the case of a poll of a vestry) is now happily abolished. So is the property qualification which was formerly required from all town councillors, guardians, way-wardens, and members of Local Boards of Health. There are no longer any *ex officio* guardians. And central and local government now rest alike on a broad basis of popular representation.

The rights of property are now safeguarded in a different way. It is not often that a local body is guilty of extravagant expenditure out of its current income; for an immediate heavy increase in any rate would cause the individual members to lose their seats. The temptation is rather to incur undue burdens by means of loans, repayment of which may be spread over a long series of years, so as to burden ratepayers after the benefit of the expenditure has been exhausted. Parliament has provided

against such improper anticipation by fixing an amount, proportionate to the annual rateable value of the district, beyond which the local authority may not borrow, by limiting the period of years within which repayment must be made, by naming a maximum rate per £, and by granting powers of control to a Central Department. Whether these expedients are sufficient or efficient may be doubted.

The plural vote was created for the minority of wealth; the cumulative vote for the minority of opinion. Under this system each elector had as many votes as there were seats to be filled, and might assign what number he pleased to any candidate. In the political sphere it has been generally held that the representation of minorities is sufficiently secured by the division of the country into voting areas so numerous that a minority in one area finds a representative through a majority in another. In the local sphere, the conflict of opinion is intensified by the small size of the arena and the mutual acquaintance of the combatants, and when questions of religious belief arise, the conflict is often bitter; so that a minority would possibly under the ordinary voting arrangements receive no representation at all. Hence the cumulative vote was invented to enable any active minority to make its influence felt. This method prevailed only at School Board elections, and ceased with the passing of the Education Act, 1902.

A third important experiment which has been tried in the sphere of local government is the extension of the suffrage, and in some cases of the right to be elected, to women. Here our local system is distinctly in advance

of the political. A woman cannot vote at a parliamentary election, neither can she serve as a member of Parliament. But if she be qualified in other respects, she may exercise all local franchises; and she may also fill most local offices, including those of poor-law guardian, overseer, parish councillor, district councillor, and member of an Education Committee. The most important offices, however, those of town and county councillor, are still closed to women. It may be noted, as a presage of what the future may bring forth in England, that the year 1894 has witnessed in New Zealand the election of a Parliament by a suffrage both male and female, and the choice of a woman as mayor of a borough.

Central and local government are alike in this, that in both our representatives are unpaid: they do a vast amount of work without any remuneration. But there was formerly a striking difference in the class of men who were elected to administer the two systems,—a difference which is now happily disappearing. Speaking broadly, in the case of the Central Government, political power now rests with the masses, but the masses elect as their representatives in Parliament men of first-rate education and intelligence. But, thirty or forty years ago, the administration of local affairs in all but the most important areas had largely fallen into the hands of small tradesmen, and that class had also a disproportionate voting power. It is of course right and just that the lower middle class should be represented on local governing bodies; but the abstention of the more educated classes from taking their proper share in local government, and the insufficient representation of the working classes on local executive bodies, were great evils.

As population increases, and as science enlarges our knowledge of sanitary matters and conditions, the problems of local government become more and more complex, and must be dealt with by more highly trained intelligence. On the other hand, a large proportion of the matters administered by local bodies—as, for instance, elementary education, the relief of the poor, and a good many sanitary improvements—directly and almost exclusively concerns the working classes. All classes should therefore be directly represented in the administrative bodies, and work together for the common good of the district. Fortunately the last ten years have seen a considerable improvement in this respect.

Again, as regards the franchise, the right to vote at parliamentary elections and the right to vote for purposes of local government alike rest on the ownership or occupation of land or houses. No amount of mere funded property, no payment of income tax, will give a vote. When we turn to taxation, however, we find a marked difference between national taxes and local rates. The Central Government taxes both real and personal property, while rates fall exclusively on land and houses. The State levies both direct and indirect taxes: local rates are, as a rule, direct only. A man is rated in proportion to the visible real property which he owns or occupies in the shape of land and houses, to the exclusion of his other property in bonds, shares, cash, ships, furniture, and the like, on which, however, he pays taxes. This practice is based on the very doubtful hypothesis that a man's annual expenditure in house rent or its equivalent is in the majority of cases proportionate to his income. It is clear that under the

present system much wealth escapes local rating which, under an ideal system, ought to bear its share of the general burdens of the locality. Why should not personal property, as well as real, be made to contribute to the rates? A large part of local expenditure, it is true, directly affects and benefits land and houses; but such matters as poor relief and elementary education have no connection with local property. It would therefore seem fair that the expenses of such matters should fall, at any rate in part, on actual income as well as on visible expenditure. Local financiers have recently claimed a share in the death duties, the tax paid on the estate of a deceased person. The practice of making imperial grants in aid of local taxation, which has been very largely extended during the last ten years, is an attempt to meet the difficulty, but it is open to objection on the ground that it has a tendency to encourage extravagant local administration. It raises, moreover, many difficult questions. Imperial funds are in part provided by indirect taxation, the incidence of which is entirely different from that of the rates. The contribution of the working classes, for instance, to the rates is relatively small; to the taxes comparatively large. Local taxation is already very largely relieved from the Imperial Exchequer. The Treasury subventions in aid of the rates amounted in the year 1902-3 to £12,849,284; and it seems scarcely fair to call for any further assistance from the Treasury at the expense of the general taxpayer.

There is another subject which deserves more consideration than it has yet received—the interaction of political and local government. If the history of

legislation were fully told, it would often be found that a great measure applying to the whole United Kingdom has been preluded by a private or local Act, secured after painful efforts by a far-seeing group of local administrators at their own risk. The successful experiment of Glasgow or Birmingham in the direction of improved working-class dwellings, or notification of disease, or municipal administration of gas or water supply, or the issue of local stock, becomes the rule which the Legislature ultimately applies everywhere else. More direct action is not wanting. The Town or County Council affords a good training-ground for Parliament. The London County Council already exerts an influence upon the House of Commons. The resolutions carried by local bodies, and forwarded to the Government, have great weight in determining its attitude upon particular occasions. The correspondence which is constantly passing between local officials and the great Departments of the State enables the servants of the Central Government to lay their fingers upon the defects of local administration, and in turn enables Ministers to provide a remedy by legislation. The currents which flow in the opposite direction are too obvious to call for much remark. The division of the electors upon local questions frequently coincides with the division of political parties. Perhaps this is to some extent inevitable; possibly, too, local government would not maintain its present condition of vigorous health, if it were wholly divorced from party politics. Nevertheless, it is a matter of regret that local elections should ever turn, as they often do, upon political issues.

CHAPTER II

GENERAL VIEW OF ENGLISH LOCAL GOVERNMENT

Chaos of Local Authorities in 1883—Early Local Government—
Confusion in the Nineteenth Century—The Local Government
Acts, 1888 and 1894—Simplification of Areas—Local Finance.

IN the work on which this volume is founded, Mr. Chalmers made the somewhat startling statement:—"Local government in this country may be fitly described as consisting of a chaos of areas, a chaos of authorities, and a chaos of rates." And this statement was true when he wrote it, in 1883. But he could not say so now. The Local Government Acts of 1888 and 1894 and the London Government Act, 1899, have changed the face of things. These most important measures are carefully devised, well thought out, and well expressed; they have remedied abuses and simplified the whole machinery. They may not be above criticism in some respects; a further measure of reform may be needed hereafter. But we now have at all events a clear and intelligible system of local government in England.

In 1883 England and Wales were divided for local government purposes into the following areas:—There were 52 counties—40 in England and 12 in Wales, 239 municipal boroughs, 70 Improvement Act districts, 1006

urban sanitary districts, 41 port sanitary authorities, and 577 rural sanitary districts; 2051 school-board districts, 424 highway districts, 853 burial-board districts, 649 unions, 194 lighting and watching districts, 14,946 poor-law parishes, 5064 highway parishes not included in urban or highway districts, and about 13,000 ecclesiastical parishes.¹ The total number of local authorities who then taxed the English ratepayer was 27,069, and they taxed him by means of 18 different kinds of rates.² There was neither co-ordination nor subordination among the numerous authorities which then regulated our local affairs. The Census Commissioners of 1871 remark in mild surprise, that it is a peculiarity of the administration of this country that nearly every public authority divides the country differently, and with little or no reference to other divisions. Each authority appeared to be unacquainted with the existence, or at least with the work, of the others. The boundaries of a union never intersected the boundaries of a poor-law parish, for the unions are aggregates of parishes. But with this exception all the various areas intersected and overlapped each other. For instance, 85 parishes and 181 unions were situated partly in one county, partly in another. All these areas were governed by different authorities, elected or selected by different means and bodies; while the Metropolis suffered from a congeries of authorities and enactments peculiar to itself. A single county may be taken as a specimen to show the reader how the various local government areas

¹ *Census Returns*, 1871, as corrected by *Preliminary Report*, 1881, and *Local Government Directory*, 1881.

² See *Eleventh Report of Local Government Board*, p. 385.

were distributed in 1883. Bedfordshire, the first of the counties in alphabetical order, will do as well as any other. Bedfordshire, with an area of 294,983 acres, had then a population of 149,473 persons; it had one court of quarter sessions, and was divided into 9 hundreds, 7 petty sessional divisions, and 8 lieutenancy subdivisions. It contained 3 municipal boroughs; 3 urban sanitary districts; 6 rural sanitary districts, some of which stretched into adjoining counties; 6 highway districts, two of which stretched into adjoining counties; 6 burial-board districts; 4 lighting and watching districts; 45 school districts, four of which ran into adjoining counties; 6 unions, some of which overstepped the county borders; 134 entire poor-law parishes, and portions of three more. All these divisions overlapped and interlaced. Each of them was governed by its own petty authority, which for the most part wholly ignored the existence of any other division or authority.

How did this state of things come to pass?

Early Local Government

Under our Saxon kings local government was both simple and strong. Indeed this has been called "the golden age of local government" in England. In Saxon times the pressure of the Central Government was but slightly felt. The main duties of a freeman to the State were comprehended in the *trinoda necessitas*: the duties of military service, the maintenance of bridges, and the repair of fortifications. As regards administrative government, the shires were almost independent. They were subdivided into hundreds, and these again

were subdivided into townships. And to this threefold division of our rural districts into shire, hundred, and township we have now practically returned. Each area had its appropriate assembly or court, which made by-laws, and administered local affairs and justice within its competence. Police was provided for by the system of *frith-borh*, which afterwards developed into frankpledge or mutual guarantee. Every freeman—and freeman then was practically synonymous with landowner—was entitled to take part in the assembly of the township. Every township was represented in the court of the hundred and the shire. No distinction was drawn between legislative, judicial, and administrative functions. The *shire-reeve* or sheriff, who with the help of the bishop and the ealdorman presided over the *shire-moot*, was at once a fiscal and an executive officer. The unit of urban local government was the *burh*, or fortified town.

The hundred-moot and the shire-moot continued under our Norman kings. The shire became the county; the shire-moot the County Court. The hundred lingered on as an administrative area till 1886;¹ though the hundred-moot had long fallen into disuse. It was the policy of the Plantagenet kings gradually to diminish the judicial authority of the sheriff, and to substitute for him the king's justices *in eyre*. And though at first the Norman Conquest had little effect on the township and its microscopic assembly, yet as the feudal system took root, and the land was cut up into manors, there was much danger that all local government would pass into the hands of the lord and his steward. But the secular priest fought for the liberties of the poor against the

¹ Riot (Damages) Act, 1886 (49 & 50 Vict. c. 38).

territorial magnate. The township merged in the parish ; and the parish meeting, over which the parish priest presided, was in fact the cradle in which all our liberties were nursed.

Then, as the hamlet grew into the town, and the parishioner became a burgess, the same spirit created municipal freedom ; the guild of each craft was still closely connected with a church ; and the men who could manage the business of their guild soon claimed to control the affairs of their borough. The rise of the parish and the rise of the borough are the two most interesting incidents in the popular history of England under the Plantagenet kings. They will be discussed more in detail in the next two chapters.

In the shires the opposite tendency prevailed. The government of the counties, which in Saxon times had always been conducted on a representative system, grew more and more aristocratic. The County Court came to consist solely of landowners : the king appointed the sheriff. Gradually all except the more important landowners became more and more remiss in their attendance at these gatherings ; and ultimately the whole management of the affairs of the county fell into the hands of the justices of the peace, who are appointed by the Crown on the nomination of the lord-lieutenant.

It is strange, indeed, that at the very time when representative government was becoming the rule in local as well as political matters, county government should have been a conspicuous exception. For historically the counties had every claim to an elective government ; and, logically, every reason which can be urged in favour of a representative system as regards the

Central Government, or as regards other local authorities, applies equally to the county.

But that is how most things grow up in England—gradually, spontaneously, and therefore irregularly and unsymmetrically. There was no system, no cohesion in our local institutions. But no one wished for either. Each borough had its own customs, which decided who should vote as a freeman, and who should not. The freemen of the borough sent their representatives to Parliament; the forty-shilling freeholders elected knights of the shire; but neither body of electors ever sought to introduce any principle of representation into the government of the counties. The justices, as a rule, managed the county business well; and the county electors, illogically but sensibly, acquiesced in a system of class government which was wholly foreign to most English institutions. Englishmen, as a rule, care but little for symmetry. The fact that an institution is anomalous, or that an illogical compromise had been adopted in its administration, does not trouble them, so long as the institution works even tolerably well.

Confusion in the Nineteenth Century

Our modern poor-law, which dates from the days of Queen Elizabeth, was entirely remodelled in 1834. For with the new century had sprung up the zeal of the reformer, and fitful attempts were constantly made to remedy the eccentricities and remove the shortcomings of our local institutions. But in these attempts, too, there was no cohesion, no system, no guiding principle. Everything was done piecemeal. Each special need was

dealt with separately. Benevolent persons, who desired to reform the poor-laws in the days of William IV., had no knowledge of sanitary science, and had no desire to interfere in the management of bridges and highways. When unions were created in 1834 a fatal mistake was made : no regard was paid to the historic division of our island into counties. Nearly one-third of the total number of unions cut county boundaries. Many parishes lay in two counties, or partly in a county and partly in a borough. Moreover, the lands which composed a single parish were often wholly detached and sometimes widely separated. In Yorkshire, as late as 1875, there were more than seventy parishes thus divided, and one parish had no less than ten outlying portions surrounded by the lands of other parishes. And as the nation developed, as its population and wealth advanced and its requirements necessarily increased, new local authorities were created,—Highway Boards ; Conservancy Boards ; Local Boards of Health ; Improvement Act Commissioners ; Port Sanitary Authorities ; Burial Boards ; and School Boards. Each special need was met by calling into existence a new and special authority. And, following the evil precedent of the unions, this was done in each case without any regard to previously existing divisions or authorities. Each new creation paid no heed to any of its predecessors, but appointed its own staff of officers, levied its separate rate, and pursued its own independent policy. The Burial Board knew not the Highway Board ; and neither of them took cognisance of the Local Board, the Guardians, or the county.

A resident in a borough was for purposes of local

government regarded as living in at least four different areas—namely, in the borough, in a parish, in a union, and in a county. None of these areas were conterminous, unless by accident, with any of the others. He was or might be governed by six different authorities—the Town Council, the Vestry, the School Board, the Burial Board, the Board of Guardians, and the County Quarter Sessions. He would have to pay a borough rate, a general district rate, a poor rate, a burial rate, and a county rate. Moreover, to increase the confusion, the same local name was often applied to different areas; for instance a union, a parliamentary borough, and a municipal borough, with widely divergent boundaries, would all bear the same name. Different parts of the borough might be in different parishes, and in different unions, and in different counties.

A resident in a rural district, on the other hand, lived in a parish, a union, a hundred, a sanitary district, a county, and probably in a highway district as well. He was governed by six different authorities—the Vestry, the Board of Guardians, the Rural Sanitary Authority, the School Board, the Burial Board, and the Quarter Sessions of the county. And the areas governed by these authorities were almost invariably different.

This state of things arose from the English habit of legislating by piecemeal. Special authorities and districts were created for special purposes as occasion seemed to require. As society outgrew its existing institutions, the defects and shortcomings were remedied by patchwork. The result was that “chaos”—that “jungle of jurisdictions”—which Mr. Chalmers so vehemently and so properly denounced. The lack of all system and

method led to extravagance as well as confusion; for each petty board or authority had its own staff of officers kept up at the expense of the ratepayers. There was a needless multiplication of elections as well as of officers—elections all held at different times. The qualifications of electors and candidates differed in each case; so did the mode of election, the returning-officer and his staff, and the period for which office was held. I have preserved as a curiosity, in the Appendix at the end of this volume, a table taken from a parliamentary paper of 1878, which summarises the conditions under which local elections were then conducted. There were, besides, eighteen different kind of rates, most of which were separately collected. To put an end to this waste of time, of men, and of money, reform was urgently needed in two directions:—

- (i.) Consolidation of authorities,
- (ii.) Simplification of areas.

The Local Government Acts, 1888 and 1894

Mr. Chalmers clearly indicated the principles on which he thought reform should proceed. "Some area should be chosen as the Local Government unit, and the larger areas should be multiples of that unit. Further, a separate authority should not be created or kept up for every function that has to be discharged. Within certain limits the same authority can very well deal with different subject-matters through separate departments." And his suggestions have been largely followed. In our constitution and our imperial politics there has been since 1688 a marked return to Saxon

principles of government; and the same principles have at length been recognised in our local affairs. Popular representation has now at last been tardily restored to all our institutions. Township, hundred, and shire reappear as parish, district, and county. The Local Government Act of 1888 created the County Council; it created also the administrative county; it took away from the Justices of the Peace most of their administrative duties, leaving them, however, their judicial functions. The District Council and the Parish Council are the creation of the Local Government Act, 1894. All Local Boards and Highway Boards, and most Burial Boards have ceased to exist. In rural districts every District Councillor is also a guardian of the poor. The Vestries and District Boards of the Metropolis have been superseded by Borough Councils, appointed under the London Government Act, 1899. The School Boards no longer exist, their duties having been transferred to the County, Borough, and District Councils, as the Local Education Authorities, under the Education Act, 1902.

Here at once a question arises, Why are different schemes of local government provided for rural and for urban districts? Would it not be simpler and clearer to adopt the same system all over England? The answer is that the threefold division is needed only in rural districts. The larger towns have their own municipal government; in other urban districts the District Council answers all purposes. Town and country are very different. In districts classed as urban by the census authorities the average population is 4167 persons to the square mile, while throughout the rest of the country the average is 143 to

the square mile. Masses of human beings, when collected together in a limited space, create more nuisances and require more government than the scattered inhabitants of rural districts. Moreover, in the country the distances are so much greater, and the number of capable men able and willing to take part in local government is much smaller. We must not in our desire for symmetry neglect the essential conditions of the problem.

Only a very general outline of our present system can be given here; further information on each subject will be found in the following chapters. But the result of recent legislation may be shortly stated thus :—

1. *The Parish*.—The parish is now regarded as a civil area; it is taken as the basis of our modern system of local government. There are 14,797 civil parishes in England and Wales. Of these 12,985 are rural parishes and 1812 are urban. Of the 12,985 rural parishes, 7250 have a Parish Council; the remainder are managed each by its own Parish Meeting. The Parish Meeting, an institution which is hundreds of years older than either the House of Lords or the House of Commons, has only received in 1894 its full recognition at the hands of Parliament. Now in all rural parishes the Vestry has no longer any power, except over the affairs of the church and ecclesiastical charities. The Parish Council, or the Parish Meeting, as the case may be, controls all parish property, has a voice in the management of all parochial charities, can veto the closure of any public road or footpath in the parish, and adopt certain permissive Acts for providing the parish with light, baths, wash-

houses, burial-grounds, recreation grounds, and public libraries.¹

2. *The Borough*.—There are now 326 boroughs in England and Wales, exclusive of the twenty-eight Metropolitan boroughs. Nineteen of these have by ancient custom all the organisation of a county, and are called “The County of the City of ——,” or “The County of the Town of ——.” For the administration of justice and some other purposes, these are deemed to be separate counties; for all other purposes, they are boroughs. Bristol and Exeter are instances. By the Local Government Act of 1888 a new class of boroughs was created, called “County Boroughs.” There are seventy-two of these. Other boroughs have a separate Court of Quarter Sessions, presided over by a Recorder; many others have a separate Commission of the Peace. In all the general management of the affairs of the borough is vested in the Town or City Council.²

3. *The Union*.—A union is a group of parishes, united for poor-law purposes under the Poor Law Amendment Act, 1834; though a single parish if sufficiently populous may be a union. In each union the poor-law is administered by a Board of Guardians. The guardians are elected by the parishes; every parish in the union which has a population of not less than 300 sends at least one member. There are no longer any *ex officio* guardians; but each Board may co-opt two additional members. In an urban district the District Council and the Board of Guardians are elected separately, and may consist of entirely different persons. But it is otherwise

¹ See ch. iii.

² See ch. iv.

in rural districts. Guardians, as such, are no longer elected for any rural parish; but the persons who are elected members of the Rural District Council are also necessarily poor-law guardians. They represent each his own parish on the Board of Guardians for the union, without any separate election; and this, although the Rural District Council and the Board of Guardians are entirely distinct bodies.¹

4. *The County District*.—As has been already stated, the hundred or wapentake is now obsolete. Its place is taken by the district. There are now 1809 districts in England and Wales, of which 326 are boroughs, 815 are urban districts, and 668 are rural districts. There are also 60 port sanitary districts. Under the Local Government Act of 1894, every urban and rural district has its District Council, which is the sole sanitary authority, and the chief, if not the sole, highway authority in the district. All Highway Boards and Surveyors of Highways have practically ceased to exist; and so have all Improvement Commissioners, except in connection with harbours. A considerable step has thus been taken towards the consolidation of authorities.²

5. *The Education Area* for both higher and elementary education is either a county or county borough, with this qualification, that for the purposes of elementary education the area may be that of a borough having a population of over 10,000, or an urban district having a population of over 20,000. The County, Borough, or Urban District Council is now the Local Education Authority. This system was introduced by the Educa-

¹ See ch. v.

² See ch. vi.

tion Act, 1902, when School Boards and School Attendance Committees were abolished. Schools for pauper children, other than workhouse schools, may be provided by combinations of unions or of parishes not in any one union. Such combinations are formed by order of the Local Government Board, but only with the consent of the majority of guardians in each union or parish.¹

6. *The County*.—There are now sixty-two administrative counties in England and Wales. Each elects its County Council, which possesses and discharges all the administrative powers and duties which formerly belonged to justices in Quarter Sessions. But no judicial functions were transferred to the County Council. The county police are managed by a joint committee of the County Council and the justices. The freeholders no longer elect the coroner: this duty or privilege is also transferred to the County Council; and with it disappears the last relic of the old *shire-moot* or county gathering. The numerous duties of a County Council are detailed in chap. x. The tendency now is to give more and more work to the County Council, and to place it to some extent in command over the District and Parish Councils within its borders. The County Council has to see that the lesser authorities do the work prescribed for them: it settles their boundaries and their disputes; and generally supervises the work of local government over the whole county. But it is itself under the control of the King in Council, and of the Local Government Board.

It will be seen at once that most of the anomalies pointed out by Mr. Chalmers and other writers prior to

¹ See ch. vii.

1888 have been removed, and the whole system of local government simplified and improved. Moreover, the principle of representation by popular election has once more been fully accepted in all our local institutions. Note, however, that the City of London still stands outside the system sketched above. The Metropolis is always—why, we know not—reserved for exceptional treatment at the hands of the Legislature. It has been made an administrative county. It has a County Council, and its Vestries and District Boards have now been converted into Metropolitan Borough Councils, with extended powers.¹

Simplification of Areas

Much also has been done to rearrange and simplify the areas governed by these various local bodies. In 1873 a Select Committee was appointed to inquire into parish boundaries. They found that the parish bore no necessary relation to any other administrative area except the union. A parish was frequently situated partly in one county and partly in another, partly in one local board district and partly in another, partly in a borough and partly in a rural district. Moreover, the lands which composed a single parish were often widely separated from each other; detached portions of a parish might be found at a considerable distance from each other, and entirely surrounded by other parishes. There were over 1300 such divided parishes in 1876. So too there were many detached portions of a county scattered over neighbouring counties. Three Acts were

¹ See ch. xi.

passed in 1876, 1879, and 1882 respectively,¹ which did much to rectify parish boundaries, and to divide large parishes, especially where a parish was cut in two by the boundary of a municipal borough or county, or by a river, estuary, or branch of the sea. The Act of 1882 provided that all detached portions of a parish which were wholly surrounded by another parish should merge in the parish which surrounded them, and henceforward be deemed to be in the same county as that parish. No fewer than 3258 parishes had their boundaries altered between 1881 and 1891.

The same policy has been carried out more efficiently by later Acts. The Local Government Act, 1888, conferred on a County Council (or if more than one county was concerned, on a joint-committee of the County Councils concerned) very wide powers of altering and defining the boundaries and of dividing and rearranging the area of any parish and county district, with the consent of the Local Government Board.² The Local Government Board was by the same Act empowered, after a local inquiry, to make a Provisional Order altering the boundary of any county or borough.³ And it is provided that in every such alteration of boundaries care must be taken that, so far as practicable, the boundaries of no two areas of local government shall intersect.⁴ The Local Government Act 1894 expressly directs the County Council, so far as practicable, to secure that the

¹ The Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), the Poor Law Act, 1879 (42 & 43 Vict. c. 54), and the Divided Parishes and Poor Law Amendment Act, 1882 (45 & 46 Vict. c. 58).

² 51 & 52 Vict. c. 41, s. 57.

³ s. 54.

⁴ s. 60.

whole of each parish shall be within the same administrative county, and within the same district, urban or rural, of that county; and also that, in the absence of special reasons, the whole of each rural district shall be within the same county.¹ If at the passing of this Act (5th March 1894) any parish was situate in more than one district, rural or urban, the parts of the parish in each such district became at once separate parishes, unless the County Council for special reasons otherwise directed, or unless an order was made altering the boundaries of the district.² Hence now, speaking generally, the parish is once more the unit of area of local government; so many entire parishes make up a district; so many a union; and so many entire districts are contained in each county.

Local Finance

There is, however, one matter to which Mr. Chalmers called attention in 1883, and which still calls loudly for prevention or reform. Few people realise the extent of the sums annually disbursed by the various local authorities in England, or the alarming rate at which our local expenditure and our local indebtedness are increasing. The ratepayer who does appreciate the situation regards the feats of elective local bodies in spending money and piling up debts with feelings akin to those with which Frankenstein beheld the pranks of the monster of his own creation. But he takes no action in the matter. No one works harder than an Englishman to make money, yet no one submits more passively to having his money taken from him. The failure of

¹ 56 & 57 Vict. c. 73, s. 36 (1).

² s. 1 (3); s. 36 (2).

our bankruptcy laws was mainly caused by the apathy of creditors in enforcing their rights. This curious national characteristic comes out strongly in all local affairs. The ordinary ratepayer looks on a rise in his rates in the same way that he looks on an increase in the rainfall. Both are matters to be grumbled at; but in neither case does he inquire into causes, and he considers the one as irremediable as the other. In spite of the prevalent apathy on the subject, the statistics of local finance are well worth attention.

In the year ending 31st March 1903—the latest period for which reliable information is at present available—the total amount expended for local purposes was £128,968,743! In order to meet this outlay £50,328,412 was raised by means of rates, £36,086,198 was defrayed out of moneys borrowed for the purpose, the Treasury contributed £12,782,803, and the rest was raised from fines, tolls, dues, and other sources of income. The total amount of the rates raised in England and Wales has increased in each year of the last decade. In the financial year 1879-80 it was £22,021,601; in the financial year 1902-3 it was, as I have just stated, £50,328,412. The rateable value of rateable property in England and Wales steadily increases; on Lady Day 1903 it was £191,106,528, and on Lady Day 1905 it was £199,355,590. But in spite of this the rate per £ steadily increases too; taking an average all over England and Wales, it was in the year 1902-3 5s. 7d. in the £!

These figures are sufficiently startling. They are taken from the Thirty-fourth Report of the Local Government Board. But it is still more startling to

note the rapid rate at which they have increased, and are still increasing. The sum total of the expenditure on local purposes for the year 1868 was £30,273,000. In 1885, although prisons had in the meantime been transferred to the Central Government, the expenditure for the year rose above £54,000,000. For 1900-1 it was £110,384,912; for 1902-3 it was £128,968,743. During the same period (1868-1903) the rateable value of England and Wales rose from £100,000,000 to £191,106,528, an increase of 91 per cent; while the expenditure of the local authorities rose from £30,273,000 to £128,968,743, an increase of nearly 330 per cent. In other words, the growth of local expenditure is more than twice as rapid as the growth in value of the property subject to local taxation.

No attempt—or at least no successful attempt—is made to keep annual expenditure within annual income. Each of our various local bodies has an outstanding debt which grows at the same rapid pace as the annual outlay. It increases at a rate much faster than that at which we reduce the National Debt. In 1875 it was £92,820,100. In 1890, £198,671,312. In 1900, £316,704,222. On Lady Day 1903 it had reached the enormous figure of £370,607,493—the sum of £53,903,271 being added to our debt in three years!

And how is all this money spent? The amounts raised on loan are no doubt expended on the objects for which they were avowedly raised—public buildings, gas-works, water-works, cemeteries, parks, etc., and it is estimated that upwards of £175,395,698 has been borrowed for the purposes of undertakings which are or may be reproductive. These loans constitute a

charge upon the rates in the event of the revenues proving insufficient to meet the amounts required to be provided for interest on and the repayment of the loans. But it is the expenditure out of the rates which most requires to be checked, and which in some districts the members of our local authorities show the least desire to check. Let us try and analyse the expenditure of the sums received in 1902-3 otherwise than from loans. £9,955,581 was spent on highways and street improvements. £10,816,038 on elementary education. Public lighting cost £1,992,845; fire-brigades, £475,293; public libraries and museums, £473,552; prosecutions and conveyance of prisoners, £170,882. £5,720,038 was expended on the police, and £12,426,199 on our paupers and pauper lunatics. It is to this last item that the ratepayers should pay special attention. 932,267 persons were in receipt of poor relief, indoor and out, on 1st January 1905, and of these 132,689 were *adult able-bodied* paupers. By means of emigration, home colonies, or in some other way, the pauperism that calls for such enormous expenditure must be diminished.

Yet it is extremely difficult for any ratepayer efficiently to control local expenditure. The figures given above are averages taken from all England and Wales; what he wants to ascertain and check is the expenditure in his own locality. Moreover, it is unsatisfactory—though, now that our local representatives are elected, it is not wholly useless—to “cry over spilt milk.” What the electors should demand from the members of every local authority is an annual *budget*—an accurate account of the probable income and the probable expenditure of

the parish, district, union, or county during the coming year. This account should be carefully preserved and examined at the close of the year, and any discrepancies between the estimates and the amounts actually expended should be noted and mentioned to those who were elected to protect the interests of the ratepayers. Every local authority should have its annual budget showing its financial position, and estimating its financial requirements for the coming year. This system exists in many cases in England; if it could be made universal, it would do much to check local extravagance.

CHAPTER III

THE PARISH

The Township—The Manor—The Ancient Parish—Different Kinds of Parishes—The Modern Civil Parish—The Overseers—The Vestry—The Local Government Act, 1894—The Parish Meeting—The Parish Council—The Ecclesiastical Parish.

The Township

MANY writers have taken great interest in tracing a relationship between the Saxon township, the English parish, the French or Belgian commune, and the Indian village community. All are but variations, they contend, of one common type which reproduces itself wherever the Aryan race is found. The essential features of the Indian village community, described by Sir Henry Maine, were reproduced in the mark system of our Teutonic forefathers, which these writers assume to be the parent of our township and parish. The mark, like the village community, was peopled by a group of families bound together by a more or less fictitious tie of kinship, who jointly owned its lands, and cultivated them on the same agricultural system.

The rights and duties of these co-proprietors *inter se* were conceived and regulated on the assumption that they were all related. Traces of the old "three-fields" or "open-field" system of agriculture still linger in remote parishes in England: no doubt, the common lands in many places were worked in strips, and often by joint labour. But there is no evidence that any general system of democratic village communism ever prevailed in England. Coincidence of custom is no proof of common origin. All we can say is that a system of common field husbandry did undoubtedly prevail in England; and that, where it did prevail, it was probably regulated by the men of each township in meeting assembled.

The township was so called from the *tun* or hedge which surrounded the group of homesteads. Around the homesteads were the township lands, held largely in common, but partly also in the separate ownership of the freemen of the township. The constitution of the typical township was democratic. Every freeman¹ took part in the business of its *gemot* or assembly; one and the same assembly made its by-laws, elected its officers, and managed its affairs. Its officers were the reeve (*gerefa*), the *pindar* (who managed the common), and the tithing-man. The functions of the reeve were chiefly fiscal. He, too, with "the four best men," represented it in the hundred court and in the shire-moot. The tithing-man was its peace officer. At a later period other officers such as by-law-men and ale-tasters

¹ It must not be forgotten that from the days of King Alfred down to the reign of Henry II. three-quarters of the population were serfs or slaves.

were elected at the meeting of the township. But the meeting had apparently no judicial functions.¹

The Manor

The Norman Conquest did not at first affect the township and its assembly. It mattered little to the village community whether William or Harold was the nominal over-lord of the earl before whom they trembled. So long as the village paid the taxes demanded of it, it was allowed at first to manage its petty affairs in its own accustomed fashion. The Normans gave the township the Norman name of "vill." Such at least seems to be the better opinion; though some writers maintain that the vill was of Roman origin, and that the word came direct from the Latin *villa*. But no one can show any clear distinction between the vill and the township; hence it is safer to presume that they were identical.² The township thus continued its course unruffled while Robert Courthose and William Rufus, and later while Stephen and Matilda, contended for the Crown. But by the days of the fierce and energetic Henry II. the feudal system had taken root and flourished in the land; and with this as one result—that the *manor* with its territorial lord soon threatened to take the place of the democratic township.

A manor was a tract of land of an uncertain size, coincident very often with a township, sometimes with a group of townships, but occasionally a wholly independent area. What made this tract of land a manor

¹ Pollock and Maitland's *History of English Law*, p. 19.

² A vill was certainly not the same thing as a manor, for a manor often contained many vills.

was that every one who held land in it, whether by free or villein tenure, held it of one and the same lord. The lord in his turn held the whole manor either of king or some intermediate lord. He was expected to build himself a house somewhere in the manor ; and some suppose that from this fact the manor drew its name (*manere*, to dwell). This residence and the land round it was the lord's *desmesne*. He also generally—almost invariably, I may say—granted portions of the manor to certain free-tenants to hold of himself on certain terms of suit and service. Indeed, in later law, no manor was complete unless it had at least two free-tenants ; for without two freeholders the lord could hold no court-baron, and without a court-baron the manor ceased to exist, and became a mere *reputed manor*. Other portions of the manor were occupied by villeins, who were bound to cultivate the lord's lands, and who gradually rose to be copyholders. The remainder was "the waste of the manor," which by fiction of the feudal law was held to be the property of the lord, but subject to the rights of common of the freehold and copyhold tenants. The same man might be lord of several manors. But, if so, he had a steward resident in each ; a separate court was held, and separate accounts were kept for each manor. Such at least was the orthodox pattern of a manor in Plantagenet times ; but there was every variety of exception. The judicial powers of the lord, for instance, varied according to the form of the grant by which he was infeoffed. Every manor had a court, in which by-laws were made and other local business transacted. Some manors also exercised a large criminal jurisdiction.

Very valuable was this manorial system when life or

limb was in danger from the Welsh, or the Scots, or some neighbouring baron. Then, indeed, it was good for the peaceful husbandman to know that he could claim protection from a powerful lord who lived in his castle close by. But there was another side to the picture. Protection was only purchased by the surrender of independence. The lord of the manor was a local autocrat. The manorial courts tended ever to keep the people in subjection. The free-tenants of each manor, whether they held by military tenure or in free socage, were bound to do homage and to render personal service to the lord. The other residents in the manor were his serfs, tied to the soil. The lands that had been the common property of the parish were now declared to be the fee-simple of the lord, granted to him by the crown as parcel of the manor. The former co-proprietors were allowed only certain limited rights of pannage and pasture. By-laws were still made for the regulation of the common; but they were no longer made by the meeting of the township; they were now made by the "homage" of the manor, in the manorial court, under the supervision of the lord or his steward. And all other rights of our peasantry were in jeopardy wherever the lord or his steward was energetic.

The Ancient Parish

Then, under Henry III. and the Edwards, the parish rose into importance; and the secular priest fought the battle of his poor parishioners. What was the parish? It was παροικία, (the abode of the parish priest, the district to which one parish priest ministered), the area

Paroikia

which paid tithes and other ecclesiastical dues to the same person.¹) It is frequently stated that the manor is the ancient township regarded as part of the feudal system, and that the parish is the ancient township regarded in its ecclesiastical aspect. Both statements are far too general to be accurate, though of many localities both statements would be true. If a large township had a church and a priest of its own, it almost always became a parish. Sometimes the archdeacon would order a township to build a church, and the inhabitants would do their utmost to do as they were bid. (But "if a place has not a church, churchwardens, and *sacramentalia*, it is not properly a parish") (Comyns' *Digest*, Title "Parish"). Hence if a township was too small or too poor to require or support a church and priest of its own, it had to join with some other township or townships. This occurred more frequently in the North of England, where the population was thin, than in the South. Hence the parish, like the manor, might consist of one or many townships. In a few cases even, the boundaries of a parish would cut a township in two; but this rarely happened. A parochial system prevailed over a large portion of England in the reign of Edward the Confessor; but not till the reign of Edward the Third can it be said that the division of the kingdom into parishes was complete.²

¹ The word "parish" was at first used in England to denote a *see*, the area presided over by a bishop, and is used in that sense when it is stated that Archbishop Theodore divided all England into parishes in the seventh century.

² Even then there were large uninhabited districts—forests, marshes, etc.—which were not included in any parish; just as in Saxon times there were outlying tracts of No-Man's Land, which belonged to no township.

See *com* ^{III} The parish priest was probably the best educated, if not the only educated, person resident in the parish. And many a battle-royal did he have with the steward of the manor in the thirteenth and fourteenth centuries. For some generations the strife was doubtful: if the priest prevailed in one parish, the lord and his steward were predominant in another. But at last the Church won the day. And it accomplished this by means of the "parish meeting." The priest resuscitated or revived the old assembly of the township which was fast falling into disuse. One is a little surprised that the manor court, at which attendance was compulsory, had not at once taken the place of the voluntary gathering of the inhabitants of the township. But it did not—partly, perhaps, just because attendance at the manor court *was* compulsory. The Saxon peasant was tenacious of his rights; moreover, he felt that in the manor court he had no voice, and could take no real part in the proceedings. The township-moot still lingered on; and the priest knew how to turn this to advantage. He summoned the inhabitants of the township to meet in the parish church, in which he himself was supreme. The township meeting became the parish meeting; the priest presided; the lord and his steward were but two parishioners. In the church all were equal, all were free: women even were allowed to take part. It was this parish meeting which kept alive some sparks of life and hope in our long-suffering peasantry. It tended ever to educate and elevate the people. The lower and middle classes under our Plantagenet kings, and throughout the Wars of the Roses, were largely indebted for the preservation of their liberties to the

secular priest. Piers Plowman and Chaucer both bear witness to his unremitting and self-sacrificing labours: he soon became the "person," and, later, the "rector," of the parish.

The business at a parish meeting never was confined to matters affecting the church or its services. In early days the distinction between things secular and things ecclesiastical was never rigidly observed, or, rather, it did not exist. The bishop sat in the county court, and claimed a large share in the administration of justice and other mundane matters. So, too, the parish meeting took from the first some part in the secular affairs of the locality. Once a year at the parish meeting the parish officers were elected whose duties were both civil and ecclesiastical, such as the churchwardens and their assessors, the receivers, the parish clerk, the sexton, etc. The parish owned much property, real and personal—houses, flocks, books, vestments, tapestry, and jewels. The receivers collected the rent, fines, fees, and other income of the parish; this fund the churchwardens administered, and presented annually to the parish meeting accounts of its expenditure. The balance-sheet was read in the nave of the church. Parish accounts thus rendered by churchwardens so long ago as A.D. 1349 are still in existence. Thus, by the end of the fourteenth century, each parish was an organised democratic community, managing its own affairs, and managing them well.

Then, as the power of the king increased, and as the serfs became first villeins and then freemen, the power of the lord of the manor declined. He still held his manorial court, but it gradually ceased to play any

important part in local government. Its jurisdiction was in many cases defined with more or less particularity by the charter or grant of the manor; and the parish priest was astute enough to limit that court to the matters so defined. Any new matters, lay or ecclesiastical, which were outside the manorial jurisdiction, fell to the management of the parish meeting. And it was now felt to be more decorous that the parishioners should hold their meeting in the vestry and not in the church itself, though all parish notices were still given out in church. And from this new place of meeting the meeting itself took a new name, and the "parish meeting" became "the vestry," with the parish priest still president. The parish became the distinctive unit of area for all purposes of local government; like Aaron's rod, it swallowed up all former names—township, tithing, hamlet, vill. The ascendancy of the parish was finally established by the action of the Legislature, when our poor-law was established on its present basis by the famous statute of Elizabeth (43 Eliz. c. 2). It had long been the custom to regard the relief of the poor as a religious duty, largely devolving on the monasteries. Now that the monasteries were dissolved, and England was full of "vagrom men," the duty was thrown upon the parishes. The Act of 1601 directed that overseers of the poor should be chosen for each parish, at the same time making the churchwardens *ex officio* overseers. From that time forward, whenever the Legislature imposed fresh duties on any locality, it as a rule preferred the ecclesiastical to the feudal organisation, and bestowed them on the parish and not on the manor. And thus we arrive at the modern parish,

with the two essential parts of its organisation—a Vestry and Overseers.

Different Kinds of Parishes

Originally the ecclesiastical and the civil parish were identical. The common law knew no distinction between them. Even at the beginning of this century their boundaries in nearly every case still coincided. There were then 10,152 parishes in England and Wales, varying greatly both in area and population. There were also a certain number of “extra-parochial places.” Most of these had been moors or forests; but there were some in cities, which were excepted for special reasons and had chapels of their own, such as the Inns of Court and the Liberty of the Rolls. Some of the larger parishes were subdivided for ecclesiastical or highway purposes into townships, chapelries, or hamlets. No less than 1300 of these ancient parishes had outlying portions wholly detached and scattered about over adjoining parishes. As the population increased and shifted, it became urgently necessary to rearrange the boundaries of these parishes. But the Legislature, as usual, would not let its right hand know what its left hand was doing. Conflicting attempts were made to accomplish the same object. For civil purposes, as we have seen, many large parishes were divided, and the boundaries of many other parishes were readjusted, by the operation of a set of Acts known as the Divided Parishes Acts;¹ in some cases, also, small parishes have been united. For ecclesiastical purposes, on the other

¹ *Ante*, p. 29.

hand, there were at first numerous local Acts, and then two distinct sets of Acts, known as the Church Building Acts¹ and the New Parishes Acts,² by means of which no less than 3629 new districts and parishes were formed for ecclesiastical purposes in England and Wales between 1818 and 1896. And in arranging these ecclesiastical divisions little or no regard was paid to the alterations which were being made almost simultaneously in the same localities for purposes of civil government. In 1901 there were 14,900 civil parishes in England and Wales, and 14,080 ecclesiastical parishes; and in only one-third of the number do the civil and ecclesiastical boundaries coincide.

It would be a valuable reform if the Local Government Board and the Church of England could jointly consider the division of the land into parishes, and come to some agreement by which these divergent areas could be brought once more into harmony, so that the same area should in future be in every case a parish for all purposes. The Local Government Board and the Ecclesiastical Commissioners have full power under their various Acts to carry out any rearrangement of parish boundaries in which they concur. As it is, whenever any parish is named, we have now to stop and ask, Which area do you mean? the civil parish, or the ecclesiastical parish of the same name?

But the chances of confusion do not stop there. There are other kinds of parishes besides the civil and

¹ There are eighteen Church Building Acts, ranging from 1813 to 1884.

² There are five New Parishes Acts, passed in 1843, 1844, 1856, 1869, and 1884 respectively.

the ecclesiastical. After unions were created, the Legislature came to regard the parish as though it was important only in connection with the poor-rate. It was the area in which a separate poor-rate was collected. The Legislature has twice so defined the word: "In all statutes, except there shall be something in the context inconsistent therewith, the word 'parish' shall, among other meanings applicable to it, signify a place for which a separate poor-rate is or can be made, or for which a separate overseer is or can be appointed."¹ The careful vagueness of this definition is a good illustration of the confusion which in 1866 reigned supreme over all local matters in England. And, as was then pointed out in a return by the Local Government Board, the area for which a separate poor-rate could be made, or for which a separate overseer could be appointed, might "consist of an entire ancient parish, one or more highway townships, a parochial chapelry, a chapelry, a quarter, a hamlet, or some part of an ancient parish which is not known by any of these designations." And the boundaries of the "poor-rate parish" did not necessarily correspond with those of either the civil or the ecclesiastical parish. In the first place, outlying townships of large parishes seem long ago to have acquired by custom the right of appointing separate overseers, and of being separately rated to the poor rate. By an Act of 1819 this customary separation from the mother parish was confirmed in the case of all places which had enjoyed the right for sixty years, but the

¹ These words are taken from s. 18 of the Poor Law Amendment Act, 1866 (29 & 30 Vict. c. 113). They are substantially repeated in s. 5 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63.)

fresh creation of parishes by custom was forbidden. Secondly, the same end was in certain cases arrived at by direct legislation. An Act of 1662, after reciting the largeness of the parishes in some northern counties, provides that in every township or village in those counties there shall be separate overseers. On the other hand, by virtue of two Acts passed in 1857 and 1868, all extra-parochial places have been merged in the adjoining parishes. The meshes of the poor-law net now cover the whole of England, and no rateable person, however slippery, can elude them.

And besides the Civil, the Ecclesiastical, and the Poor-rate parish, there were at least two other kinds of parish which deserve a passing notice. There was (and still is) the Land-Tax parish, which is defined by statute¹ as any town, ward, township, tithing, parish, place, or precinct for which a separate assessment of income-tax duties or land tax may be made, or for which any assessor or collector may be lawfully appointed for the purpose of assessing or collecting such duties or land tax. There was also the "highway" parish, which was defined in the Report of the Committee of the House of Lords on Highways (p. vi.) as "any parish, township, or place maintaining its own highways, or which would maintain its own highways, if it were not included in a highway district or an urban sanitary district"—a definition which at least makes one thing clear, that the highway parish was not necessarily identical with any other kind of parish. In the Burial Acts, too, the word "parish" was sometimes employed in a special sense,

¹ Section 5 of the Taxes Management Act. 1880 (43 & 44 Vict. c. 19).

peculiar to those Acts. But the effect of the Local Government Act of 1894 is practically to put an end both to the highway parish, and to the Burial Acts parish, as a separate area of local government.

Apart from statutory readjustment, the boundaries of parishes are determined by immemorial custom, and are ascertained and evidenced by perambulations. These perambulations formerly were made annually in Rogation Week, but now it seems they should be made triennially; for the Poor Law Act of 1844 authorises the expenses of perambulations incurred by the parish officers to be charged to the poor-rate, provided the perambulations do not occur more than once in three years. The expense of setting up and keeping in repair the parish boundary stones may also be charged to the poor-rate. Parishes are still very unequal both in area and population. There are many parishes with an area of less than 50 acres, and many with an area exceeding 10,000 acres. There were in 1901, 25 parishes without inhabitants; 9138, or 61·2 per cent of the total number, with a population under 500; 5223, or 35·1 per cent, between 500 and 10,000; and 514, or 3·5 per cent, with a population over 10,000. The most populous parish, Islington, had 334,991 inhabitants. In Northumberland 50 per cent of the parishes had under 100 inhabitants. The average population was nearly 2200.

The Overseers

The essential officers of the civil parish are "the overseers of the poor." Where a civil parish is also an ecclesiastical parish the churchwardens were until 1894

ex officio overseers, and are so still in urban parishes unless otherwise ordered by the Local Government Board.¹ The overseers who are *not ex officio* are now appointed annually, in urban parishes by the justices, or by an urban or other authority to whom the power has been transferred by an order of the Local Government Board, in rural parishes by the parish meeting or parish council. Service in the office is compulsory, subject to certain exemptions and disqualifications. A person, however, who is appointed against his will may appeal to the Quarter Sessions. The overseers are unpaid. They have no power to appoint or pay a deputy; but the urban authority, or the rural parish meeting or parish council, may elect one or more "discreet persons" to be assistant overseers, and to perform all or any of the duties of the overseers. The salary of the assistant overseers is paid out of the poor-rate. They are required to find security. On the application of the guardians a paid collector may also be appointed for any parish in the union.

The duties of the overseers in respect to poor relief were in 1834 transferred to the guardians, but the overseers still have power in cases of immediate urgency to order relief to be given. It is the duty of the overseers to prepare the jury list, and to make out and publish various lists of voters for parliamentary and local government elections. They also publish the list of claims and objections, and are bound to attend with their books at the revision courts.

The chief duty, however, of the overseers is to make and levy the poor-rate. They know how much

¹ Local Government Act, 1894, s. 33.

money is needed; they know the total rateable value of the parish; they proceed to calculate how much in the pound will be sufficient to produce the required amount, and then assess it upon the different tenements according to the valuation-list. The poor-rate is levied by an uniform¹ assessment or poundage on the net rateable value of all the lands, houses, mines, etc., in the parish. The overseers, when proceeding to make a poor-rate, copy the valuation list or the former poor-rate, with amendments, adding to it a statement of the number of shillings or pence in the pound which will produce the required sum, and a column showing the amount to be paid by each ratepayer, and another column for arrears and sums excused. The document so filled up is properly called an "assessment." A declaration of its correctness is signed by the overseers, and it is submitted to two justices for their allowance, which cannot be withheld if the rate is in proper form. When allowed it becomes a "rate." It must be published, and inspection of it must be permitted to ratepayers and certain authorities. Any one aggrieved may appeal to Quarter Sessions against the rate as a whole or any item of it; but, subject to appeals, the overseers may proceed to collect the rate from the parties liable, and may "levy" or enforce their demands, if necessary, by summons, distress, and, ultimately, imprisonment. There are some complicated provisions under which the owners of small tenements may compound and pay the rates instead of the occupiers. It must be remembered that many expenses not connected with the relief of the poor are by statute directed to be dis-

¹ But see the Agricultural Rates Acts, 1896 and 1901.

charged out of the poor-rate, and that some other rates, such as the county council rate, the borough rate, and the education rate, for instance, may be collected with, and as if they formed part of, the poor-rate.

The Vestry

The ultimate authority in all parish matters, prior to 1894, was the Vestry. The vestry, as we have seen, was primarily the assembly of the township for ecclesiastical matters, and derived its name from the old place of meeting. If we go back some 300 years we shall find that every Englishman was not only a churchman, but was bound to attend his parish church. All parish notices were given out in church, and after service it was convenient and natural for the parishioners to go to the vestry attached to the church to discuss and settle parish matters. The rector or other parish priest presided, but the business of the meeting was never confined to ecclesiastical matters. From the first, secular affairs were prominent, and became more and more prominent as years rolled on. The officers of the parish or township were always elected in the vestry, such as the churchwardens, the waywardens, the assessors, and the collectors; and in later days the assistant overseer and the surveyor of highways. To this meeting the churchwardens annually presented their balance-sheet showing how the income of the parish during the preceding twelve months had been expended. Matters affecting the property of the parish (which was generally vested in the churchwardens), the repair of all highways in the parish, etc., would also be discussed. And to this day,

though parish notices are no longer given out in church, they must be posted on the doors of all churches and chapels of the Established Church. If the parish contains more than 2000 inhabitants, the vestry may hire or build a vestry hall, so as to avoid the necessity of holding large, and possibly stormy, meetings in the immediate vicinity of the church.

Vestries are either (*a*) Common, or (*b*) Select.

The common parish vestry is not a representative body; it is merely "the ratepayers of the parish in vestry assembled"; that indeed is its full title. Every ratepayer, whether male or female, whether a churchman or a dissenter, whether resident in the parish or not, is entitled to attend and vote, unless his or her rates are in arrear; and so is every resident occupier who is liable to be rated to the relief of the poor, but whose rates are as a matter of fact paid for him or her by the landlord. A corporation that pays rates may vote by its secretary or other agent. Three days' notice of a vestry meeting must in all cases be given. The clergyman of the parish, if present, is still entitled to take the chair. If he is not present (and perhaps in all cases where the parish is not also an ecclesiastical parish) the meeting may elect its chairman. Minutes of the meeting must be taken, which the chairman must sign. The opinion of the meeting is taken by show of hands, but any one present may demand a poll. If a poll be taken, the system of voting is plural, the voters having from one to six votes according to rating. Every one who is rated at £50 or less has one vote; every additional £25 rate gives one extra vote, until the total of six votes is reached. No one may have more than six votes.

In some of the larger parishes, however, there is what is called a "Select Vestry." The ratepayers do not themselves attend the vestry, but elect representatives to act for them, who are called "vestrymen." In a few parishes this method was adopted in very early times: it became a custom of the parish to elect vestrymen; probably through the apathy of the inhabitants as to their parochial rights, or possibly because the church was not big enough to hold all the ratepayers. These may be called customary select vestries; there appear to be 61 still in existence. The custom of the parish will in each case determine the number of the vestrymen and the mode of their election, which is usually by co-optation.

There are also Statutory Select Vestries. These were created by an Act of 1831, commonly known as Hobhouse's Act.¹ This Act is permissive, and can only be adopted by parishes having more than 800 rate-paying inhabitants. It must be adopted after due notice to the parishioners by a majority of two-thirds of the ratepayers voting; and the whole number of persons voting must be a clear majority of the ratepayers of the parish. If the Act be adopted, a Select Vestry is elected by the ratepayers. Each ratepayer has only one vote. The number of select vestrymen is fixed at twelve for every 1000 ratepayers, but the total number elected must not exceed 120. The clergyman of the parish and the churchwardens are *ex officio* members. One-third of the members of the Select Vestry retire annually; but are re-eligible. The Act further provides for the publication of the accounts

¹ 1 & 2 Will. IV. c. 60.

of parish charities, and the election of auditors to audit the accounts. This Act was largely adopted by the London parishes; but it was repealed, as regards the Metropolis, by the Metropolis Local Management Act, 1855; and it is believed that there are now only 8 parishes governed by a Select Vestry under Hobhouse's Act.

The duties of the vestry, up to 1894, consisted mainly in managing the parish property and the parochial charities, if there were any, and in adopting and working certain permissive Acts, such as the Public Libraries Act. And in all urban parishes the vestry still retains these powers unless transferred to the urban or other authority. The Local Government Act of 1894 did not create a Parish Council in any urban parish. But in all rural parishes the powers of the vestry (whether common or select), except those relating to "the affairs of the church or to ecclesiastical charities," have been transferred to the Parish Council or the Parish Meeting; so that the vestry has now ceased to take any part in the civil government of any rural parish.

The Local Government Act, 1894

For two generations prior to 1894 the parish was disregarded, not to say despised, as an administrative unit. In 1834 poor-law administration was taken out of the hands of the vestry and transferred to the guardians. The establishment of the county police in 1856 superseded the necessity for the old parish constables, and since an Act of 1872 no parish constable need any longer be appointed. By the Public Health Act of 1872 the sanitary functions of the vestry

in rural districts were transferred to the guardians as the rural sanitary authority. In urban districts vestries had for some years ceased to have sanitary powers. The parish sank in importance. It was regarded solely as the unit for taxation and electoral purposes. All rates included in the poor rate were, and still are, collected parochially, and the lists of voters for parliamentary, county council, and municipal elections are also made out parochially.

The innovations made by the Local Government Act, 1894, are both sweeping and salutary. The parish has become once more the primary unit of local government. The main cause which led to this change was the admission of the agricultural labourer to the parliamentary franchise in 1884. This extension of the franchise directed attention to the special wants and needs of the rural elector. The parochial system, as it existed in English country parishes, was not calculated to supply any democratic training for self-government, or to promote the recognition of common interests and mutual duties in village communities. The ordinary English farm-labourer was so accustomed to depend on the clergyman in spiritual matters, on the squire for his cottage, and on the farmer for his wages, that he did not realise that he was an independent citizen, although he had acquired a parliamentary vote. It was also a period of agricultural depression and rural depopulation. The same motives that prompted the passing of the Allotments and Small Holdings Acts had a powerful influence in suggesting the creation of Parish Councils. Finally, the constitution of County Councils in 1888 demanded as its logical sequel further

developments of the representative system outside the towns, where it had long flourished. The vestry still exists in every urban parish; a ghost of it survives in rural parishes for the administration of ecclesiastical affairs. But the vestry is for all practical purposes of civil government superseded in every rural parish, and in its stead are established the Parish Meeting and the Parish Council.

It will be observed at once that the Act creates a sharp distinction between urban and rural parishes. This was unavoidable. Towns require much more government than the country, especially in sanitary matters.¹ An urban parish is not necessarily in a borough; though it always lies within an urban district. Any parish which, on 5th March 1894 (the date of the passing of the Act), lay wholly in an urban sanitary district is now an urban parish. If on that day any parish lay partly within, and partly without, a rural sanitary district, each part became a separate parish, and the urban part is now an urban parish. If on 5th March 1894 any parish was situate in more than one urban district, the parts of the parish in each such district, unless the County Council for special reasons otherwise directed, became separate parishes. And since 5th March 1894 further alterations have been made under the Act of 1894 and other statutes. So that there are now 1812 urban parishes in England and Wales, 182 of which are in the Metropolis. Every urban parish still has its vestry, and as its officers two churchwardens and at least two overseers of the poor, who are appointed annually. The churchwardens

¹ See *ante*, p. 23.

are *ex officio* overseers of the poor for the parish unless otherwise ordered by the Local Government Board¹; their other duties are stated further on in this chapter, where the ecclesiastical parish is described.²

On the other hand, every parish which was in a rural sanitary district on 5th March 1894 is now a "rural parish." If on 5th March 1894 any parish was partly within, and partly without, a rural sanitary district, each portion became a separate parish; and the portion within such district is now a rural parish. In short, any place which is not within an urban district, and for which a separate poor-rate can be made, or a separate overseer appointed, is a rural parish, and has a Parish Meeting. The Parish Meeting has functions to perform in every rural parish; a Parish Council exists only in rural parishes with a population over 300, and in parishes having a smaller population in which it is established by the County Council on the demand or with the consent of the Parish Meeting. When a rural district is coextensive with a rural parish, the District Council has the powers of a Parish Council. There are now 12,985 rural parishes in England and Wales, of which 7250 have a Parish Council.

The Parish Meeting

The Parish Meeting is in every case the assembly of the parochial electors, who are simply "the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish." Thus many persons

¹ Local Government Act, 1894, s. 33.

² *Post*, p. 67.

are parochial electors who do not contribute to the rates of the parish at all, such as owners who reside out of the parish, lodgers, and persons enjoying the service franchise. The Parish Meeting is therefore a much larger body than the former vestry, which comprised only persons rated to the relief of the poor and those whose rates were paid for them by the owner of the property under the Poor Rate Assessment and Collection Act, 1869. Peers of the realm, soldiers, sailors, policemen, officers and servants of any County or District Council, and women, whether married or single, may all be parochial electors. The married women must, however, possess a separate qualification ; for a husband and wife cannot both be qualified in respect of the same property. But a married woman is not qualified to be a parochial elector merely because she owns property within the parish ; for the Local Government Act, 1894, does not create a new qualification in favour of married women. So too the freeman of a borough, though on the parliamentary register for that borough, is not, on that ground merely, a parochial elector. But any one who owns property in the parish, and who is registered on the parliamentary register of electors for the county in respect of such ownership, is a parochial elector. A register of parochial electors is duly prepared and kept ; and no one whose name is not in that register is entitled to attend a parish meeting or to vote as a parochial elector. The same person, if duly qualified, may be registered as a parochial elector in more than one parish.

In every parish the Parish Meeting must assemble at least once in every year on some day between 1st March

and 1st April, both days inclusive. This is called "the annual assembly." At this assembly the Parish Council, if there be one for the parish, is now usually elected; and in that case the assembly must be held at the date fixed by the Local Government Board for such election, which is usually the first Monday after March 10th. If there be no Parish Council for the parish, the Parish Meeting must meet at least twice a year, *i.e.* once besides the annual assembly. The proceedings must not commence before six o'clock in the evening, so that labouring men may attend. The chairman of the Parish Council, when there is one, is entitled to preside at the meeting; when there is no Parish Council, the meeting elects its own chairman annually. All questions are decided by a majority of the parochial electors present and voting at the meeting, unless a poll is demanded. Minutes must be kept. The expenses are payable out of the poor-rate. In certain cases a Parish Meeting may be held for a parish ward or other portion of a parish. At every Parish Meeting "parish affairs" may be discussed and resolutions passed thereon.

The principal power possessed by a Parish Meeting is that of adopting any or all of certain permissive Acts, *viz.* Acts for lighting and watching the parish, and for providing it with baths, wash-houses, burial-grounds, recreation-grounds, and public libraries.¹ It has a partial control over the disposition of parish property; it can veto the closing or diversion of any highway. Where

¹ Many difficulties have arisen as to the details of the methods prescribed for the adoption and the working of these various Acts in rural parishes. These are well pointed out by Mr. Harris Stone, in an able article which appeared in the *Law Quarterly Review* for April 1898; but they are beyond the scope of this treatise.

there is a Parish Council, it cannot support or oppose draft charity schemes, sell or exchange land or buildings, incur expenses involving a rate exceeding threepence in the pound, or raise a loan, without the consent of the Parish Meeting. When there is no Parish Council, the Parish Meeting has certain of its powers, including those formerly enjoyed by the vestry, and the appointment of overseers, and the County Council may confer any other of the powers of a Parish Council upon it. Its chairman and the overseers are a body corporate; and it may appoint committees and levy a rate not exceeding sixpence in the pound, inclusive of the rate required for the administration of any of the adoptive Acts.

The Parish Council

A Parish Council is a body corporate with an official title: "The Parish Council of ———." It has perpetual succession, and may hold land without any licence in mortmain;¹ but it has no seal. There are now 7250 Parish Councils in England and Wales. There is one in every rural parish which has a population of 300 or

¹ The fact that a corporation had perpetual succession (*i.e.* continued for ever) was bitterly resented in feudal times, and for this reason:—On the death of an individual landowner his lord was entitled to a "relief," a fee paid by his heir on succeeding to the property, or, if there was no heir, the lands "escheated" (reverted) to the lord; whereas with a corporation the lord saw no prospect of either relief or escheat. Hence it was the law that no corporation, lay or ecclesiastical, could hold land without an express permission from the Crown, and formerly also from the intermediate lord. Such permission was called "a licence for land to be held *in mortuâ manu*" (in a hand which would yield no fruit to the lord), or more briefly, "a licence in mortmain."

upwards, and also in every parish which has a population of more than 100 but less than 300, if the Parish Meeting has resolved to have one. If the population of any parish does not exceed 100, the County Council may, if it thinks fit, establish a Parish Council, but only with the consent of the Parish Meeting. The County Council may also group small parishes together under a common Parish Council, with the consent of the Parish Meeting of every parish in the group. On the other hand, the County Council may divide large rural parishes into wards for electoral purposes.

A Parish Council consists of a chairman and such a number of councillors, not being less than five nor more than fifteen, as the County Council may fix from time to time. Any parochial elector, male or female, married or single, or any person resident for a year in or within three miles of the parish, may be elected. The chairman must have the same qualification as a councillor, but may be chosen either from within or from without the Council. The councillors hold office for three years.¹ At first a special parish meeting had to be called for this purpose; but now the parish councillors can be, and usually are, elected at "the annual assembly" of the parochial electors. Opportunity must be given at the meeting for putting questions to such of the candidates as are present, and receiving explanations from them; and every candidate is entitled to attend the meeting and speak, but, unless he is a parochial elector, not to vote. The election is regulated

¹ 62 & 63 Vict. c. 10.

by rules prescribed by the Local Government Board under sec. 48 of the Act of 1894. Such rules are for the present embodied in a General Order, issued on 14th January 1901, and known as "The Parish Councillors' Election Order, 1901." All the parochial electors have equal voting power; and the election is by show of hands—a somewhat clumsy method. Formerly any one elector could put the parish to the expense of a poll. But now one elector has no longer the power to insist on a poll. The chairman may grant a poll; otherwise it must be demanded by electors present at the meeting, not being less than five in number, or one-third of those present, whichever number is least. As a matter of fact a poll is not often demanded, because the expense spread over so small an area is considerable. The poll is taken by ballot.

The Parish Council has inherited most of the civil powers of the vestry, subject, as regards the adoption of the permissive Acts referred to above, to the control of the Parish Meeting. It appoints the overseers and assistant overseers. It has inherited the powers and duties of the overseers or churchwardens to appeal in respect of the valuation list, the poor-rate, and the county rate; to provide parish books, offices, and fire-engines; and to make and maintain allotments. Parish property, unconnected with church affairs or ecclesiastical charities and formerly vested in the churchwardens or overseers, is now vested in the Parish Council; and similar property held by trustees may be transferred to the Parish Council. The Parish Council may petition the County Council to purchase or hire compulsorily land for allotments, and may manage the

allotments thus provided. It may also make statutory representations on the subject of unhealthy dwellings and obstructive buildings. It may provide parish offices, meeting-rooms, and recreation-grounds, may manage and improve village greens and other open spaces, utilise wells, springs, or streams for water-supply, deal with filthy ponds and ditches, accept gifts, acquire rights of way, and repair footpaths. It administers the adoptive Acts. It can acquire land by agreement for any purpose authorised by law; and, failing agreement, can, with the consent and by order of the County Council, or (upon appeal) of the Local Government Board, obtain it by compulsory purchase. Its consent is required to the discontinuance or diversion of any public right of way, and it may support or oppose a proposed alteration of parish boundaries. It can, with the consent both of the County Council and the Local Government Board, borrow money for certain purposes, up to a maximum of one-half of the assessable value of the parish. But it cannot levy a rate exceeding threepence in the pound without the consent of the Parish Meeting; and in no case can it levy a rate exceeding sixpence in the pound, exclusive of rates under the adoptive Acts.

Important powers over parochial charities have been conferred on the Parish Council, which do not operate, however, in most cases until the charity has been in existence for forty years. Where overseers are *ex officio* trustees of any parochial charity, and where churchwardens are *ex officio* trustees of any non-ecclesiastical parochial charity, the Parish Council are to appoint other trustees in their place; where the vestry appointed trustees or beneficiaries of a non-ecclesiastical parochial charity, the

power is now exercised by the Parish Council ; and where there is no popular representation on the governing body of a similar charity, the Parish Council may appoint additional members to the number allowed by the Charity Commissioners.

The Parish Council and the Parish Meeting have the right to meet in public elementary schools, and possibly, in certain cases, in the parish church. They may not meet on licensed premises unless no other suitable room is available. The accounts of every Parish Council and also of every Parish Meeting must be made up to 31st March in each year, and must be audited by a district auditor, who is an officer of the Local Government Board.¹

It is perhaps too soon to pass any decided judgment upon the changes effected by the Act of 1894, an Act which in some quarters was expected to change the face of rural England. It certainly has not done all that some people expected it to do. But it has undoubtedly aroused in the minds of our rural population a sense of citizenship and responsibility and widened their conception of the powers and duties of each individual elector. And it is not unreasonable to hope that the next half-century will produce as notable a development of civic life in the country-side as the last two generations have witnessed in the towns. It is at least satisfactory to the student of local government to

¹ For further information as to the powers and duties of the Parish Council and the Parish Meeting, the reader is referred to Messrs. Macmorran and Dill's treatise on the Local Government Act, 1894 (3rd edn. 1896).

observe the efforts which have been made in this and other recent statutes to introduce some system and symmetry into the former chaos of legislation. There is now throughout rural England and Wales a triple gradation of local authorities—Parish Council, District Council, and County Council—each exercising suitable functions within a defined area, and each correlated to the others according to an intelligible plan.

The Ecclesiastical Parish

Since the abolition of compulsory church rates by the Act of 1868, the ecclesiastical parish has ceased to be of much practical importance for purposes of local government. It is almost entirely a permissive institution. Still it once played a great part in English local affairs, and it has but recently left the scene, so that a short description of it may not be out of place. Besides, though an English citizen owes but few duties as an ecclesiastical parishioner, he has some important general rights in that capacity to which the law will give effect. In the theory of English law every Englishman is a member of the Church of England. The privilege of dissent is conferred on Englishmen by a long series of statutes, each dealing with a particular point and removing some special grievance; but by the exercise of his privilege of dissent an English citizen does not forfeit his legal rights as a member of the National Church; he is only relieved from certain corresponding and irksome duties which were formerly imposed upon him. It must not be forgotten that dissenter and churchman alike pay tithes, both ordinary and extraordinary.

The affairs of the ecclesiastical parish are regulated by the vestry, which is, properly speaking, an assembly of the minister, churchwardens, and parishioners. It was, and perhaps still is, the duty of the vestry to make church rates, in order to provide the necessary funds for the repair of the church and churchyard, and for keeping up the fittings and ornaments of the church. An Act of 1868¹ provides that the payment of church rates (except where they had previously been mortgaged) shall no longer be enforced by any legal process. But the Act distinctly recognises their validity, for it provides that bodies corporate and trustees may pay church rates, and that the sums so paid shall be allowed them in their accounts. It further declares that no person who has made default in payment of a church rate shall be entitled to vote in respect of the expenditure of any moneys arising therefrom. Church rates therefore form an apt illustration of what lawyers designate a duty of imperfect obligation—that is to say, a duty recognised as such, but enforced by no sanction.

The minister is the clerical officer of the ecclesiastical parish. Whether he be rector, vicar, or incumbent, he is what is called a corporation sole—that is to say, the law, in regulating his rights and obligations, regards the office and not the individual that fills the office. The duties of the minister consist in the performance of the offices of the Church as by law ordained. He has also certain civil functions, by virtue of which he is bound to act as registrar, and to record, for civil purposes, the baptisms and marriages at which he has officiated in his clerical

¹ 31 & 32 Vict. c. 109.

capacity. He is also bound to register all burials which have taken place in his churchyard, and is entitled to the customary fee therefor, whether he has officiated at the funeral or not. The minister, as such, has the custody of the church ; and for many purposes the freehold of it, as well as of the glebe, is regarded as vested in him. The freehold of the churchyard is also vested in the minister, but he holds it subject to the rights of the parishioners to be interred therein. By the common law any person, whether a parishioner or not, who dies within the parish, is entitled to be buried in the parish churchyard ; and a person who dies in another parish is entitled to be buried in his own parish churchyard.

The principal lay officers of the ecclesiastical parish are the churchwardens. They are usually two in number, and are elected annually during the first week after Easter. If the minister and parishioners do not agree on the persons to be chosen, the minister nominates one, and the vestry selects the other. The bishop of the diocese is said to have a right of veto, if an obviously unfit person be elected to the office. Any ratepaying householder is eligible, and, as in the case with most local offices in England, service is compulsory. Peers and Members of Parliament are by common law exempted from the duty of serving as churchwardens, and a similar exemption has been extended by various statutes to some of the professions. It is the duty of the churchwardens to see that the church and churchyard are kept in proper repair. They are bound to render to the Local Government Board annual accounts of their expenditure of any money which they raise by a compulsory rate. It is also their duty to keep order in the church

during divine service. In olden times churchwardens acted generally as *censores morum*, and presented any parishioner who had misbehaved at the Easter Visitation for ecclesiastical censure or punishment.

Two other lay offices require a passing notice. The parish clerk was once an important personage, though his glory is now departed. His office is a freehold office, and his fees, which originated in custom, are now recognised and secured by numerous statutes. But an Act of 1844 has provided that a curate may, in addition to his other duties, be appointed to do the work and receive the emoluments of the parish clerk; and it further provides machinery for removing from office a parish clerk who has misbehaved. The sexton (sacristan) is the only other officer of the ecclesiastical parish that need be noticed. He is usually elected by the vestry. The office is an ancient and freehold office. The duties of the sexton consist in keeping the church swept and clean, and in looking after the church furniture under the direction of the churchwardens. It is also his duty to make and fill up the graves for the dead, and for this he is entitled to certain customary fees. A woman can be a sexton, and also, apparently, a churchwarden.

CHAPTER IV

THE BOROUGH

English Towns—Creation of New Boroughs—History of the Boroughs—The Municipal Corporations Act—Constitution of the Borough or City—Borough Officers—Functions of the Council—Borough Finance—Central Control.

OF our larger towns 326 are boroughs; that is, their inhabitants are incorporated by charter, and govern themselves; they manage the affairs of their own town without the interference of any external local authority. The fact that a town is incorporated gives it *ipso facto* a perpetual succession, the power of holding lands in mortmain, and the right to use a common seal and a corporate name, by which it may act, contract, sue and be sued. The fact that it is incorporated by charter gives it the power to make by-laws for the regulation of the borough. The machinery of municipal government in all these boroughs is now very much of one pattern. A little country-town like Chippenham with its 5074 inhabitants is administered on the same system as Manchester and Liverpool. But formerly the utmost diversity prevailed.

The Metropolitan boroughs brought into existence by the London Government Act, 1899, are dealt with in a subsequent chapter of this work. Although called boroughs the provisions of the Municipal Corporations Acts generally do not apply to them.

History of the Borough

The name "borough" is undoubtedly derived from the Saxon word "burh," which meant originally a fortified place, a place which had a ditch and mound, instead of merely a hedge. As the "tun" was originally the fenced homestead of the cultivator, the "burh" was the fortified house and courtyard of the great noble.¹ Around his house and under his protection smaller men would naturally congregate, and the town, in the modern sense of the word, would thus arise. The Anglo-Saxon borough was simply a more strictly organised form of township. But by the time of the Norman Conquest many of the towns in England had acquired the constitution of the hundred rather than that of the township; their moot was a court, and they were therefore exempt from the jurisdiction of the hundred court. In several cases, in addition to holding their own courts, they had obtained the right to compound for taxation. Ancient cities, such as Winchester, London, and York, preserved their historic unity. New centres of trade sprang up, each with its market-cross. Under William the Conqueror there were but 50 villis that could claim to be called boroughs: at the accession of Edward I. there were at least 150. But there was nothing approaching to the modern idea of a corporation, with its legal personality, its common seal, and its perpetual succession. Even London under its port-reeve and bishop, the two officers who seemed to give it a unity and identity of its own, was only a bundle of communities, townships, and parishes, each of which

¹ Stubbs's *Const. Hist.* vol. i. pp. 92, 306.

had its own constitution. As time went on, we find the towns gradually acquiring further privileges by grant or charter from the lord or the king himself; for if a borough had no other lord, it was the immediate property of the king: such at least was the feudal theory, which prevailed over the actual facts. The most important of these was the "*firma burgi*," the right to pay a fixed sum by way of composition for the indefinite *tallages* previously exacted from the town, and to assess and pay that sum themselves. Another privilege that grew up under Henry II. and his successor, deserves mention—if a serf escaped into a royal borough, and lived there unreclaimed for a year and a day, he became free.¹ As the towns acquired importance in the country at large, by reason of their wealth and trade, so the trade guilds acquired strength and importance in the towns themselves. The regulation of trade fell into their hands, and their privileges were frequently confirmed by charters. It must not be thought, however that the towns developed on any uniform principle. Each town had its peculiar constitution and customs, though a certain general resemblance may perhaps be recognised throughout. Each relied on its own charter. At the accession of Henry III. "the most advanced among the English towns had succeeded in obtaining, by their respective charters, and with local differences, the right of holding and taking the profits of their own courts under their elected officers, the exclusion of the sheriff from judicial work within their boundaries, the right of collecting and compounding for their own pay-

¹ This rule apparently did not hold in either London or Norwich (Pollock and Maitland, p. 634).

ments to the Crown, the right of electing their own bailiffs, and in some instances of electing a mayor, and the recognition of their merchant guilds by charter, and their craft guilds by charter or fine.”¹

The first historical Mayor was Henry Fitz Alwyn, Mayor of London. He held office till his death in 1215. Later Mayors of London were appointed for shorter periods; subsequently it became the custom for the citizens to elect their mayor annually. The mayor was assisted by twenty-five sworn citizens or jurats, who seem afterwards to have acquired the name of aldermen, though that title was originally applied to the heads of the craft guilds. As London was the most powerful and privileged municipality, other towns would naturally take it as their model, and try to secure for themselves like privileges and institutions. The constitutional history of Leicester may be taken as typical of that of many other boroughs.² “The chief court of the town was the portman-mote, in which the bailiff of the lord continued to preside until 1246. There was also a merchant guild presided over by aldermen. From the year 1246 a mayor took the place of the alderman and edged out the bailiff, but the portman-mote and merchant guild retained their name and functions. Under the merchant guild were the craft guilds. The tailors’ guild paid ten shillings to the merchant guild for every new master tailor enfranchised, and doubtless the other trades did the like. In 1464 Edward IV recognised the position of twenty-four common burgesses and a court of common council, who in 1467

¹ Stubbs’s *Const. Hist.* vol. iii. p. 559.

² As to Ipswich, see Pollock and Maitland, pp 648, 649.

were empowered to elect the mayor. In 1484 the twenty-four took the title of aldermen, and divided the town into twelve wards ; and in 1489 the mayor, twenty-four aldermen, and forty-eight councillors formed themselves into a strictly close corporation, took an oath by which all the other freemen were excluded from municipal elections, and in 1504 obtained a fresh charter confirming their new constitution.”¹ In many of the towns, however, though the type of administration was similar, it rested on a more representative basis. The councillors were elected from among and by the freemen at large. In nearly all the freedom of the borough could be obtained by gift or purchase, as well as by service, marriage, or descent. There was always, however, a large body of inhabitants who were outside the privileged class, and who in consequence were subject to various vexatious restrictions and imposts. But it was not till the close of the fifteenth century that the borough had become a “corporation” in the strict sense of that term—a legal *person*. On the accession of Henry VIII. there were in England some 200 boroughs, each with a close corporation of mayor, aldermen, and council, with precisely defined organisation and numbers,—not indeed uniform, but of the same general conformation,—and with powers which in practice varied widely in the different communities. In substance, then, the chartered towns had, in the fifteenth century, acquired much of the form and organisation which we find existing at the time when they were so searchingly overhauled by the Royal Commission of 1835.

In the Middle Ages the policy of the Crown was to

¹ Stubbs's *Const. Hist.* vol. iii. p. 581.

strengthen the towns in order to create a counterpoise to the power of the nobles. During the reign of Richard II. began the practice of including in municipal charters a provision making the corporate officers justices of the peace; thus excluding the court of the local lord. Each chartered borough or city, moreover, had the right of sending one or more burgesses to Parliament to represent it there. The first charter which expressly recognises this right was that granted to Wenlock in the reign of Edward IV.; but the chartered recognition of the right was probably in many cases a mere confirmation of existing privileges. Until the reign of Henry VII. the encroachments on popular liberty within the towns themselves had been local and spontaneous, but during the Tudor period the Crown began to grant charters vesting all the powers of municipal government in the mayor or other head officer and the council. By many of these charters the same governing body was entrusted with the exclusive right of returning members to Parliament. The Crown was no longer afraid of the aristocracy, and in many instances the office of high steward was created and given to some powerful peer or landowner, who became the patron of the borough, and practically disposed of the parliamentary seat.¹ The Commonwealth, however, crushed the power of the aristocracy, and at the time of the Restoration the Crown and Court party found themselves opposed by the towns as the representatives of democracy. The middle classes in the main were Whig and Protestant. It was therefore determined to attack the boroughs through the courts of law. A *quo warranto* information

¹ Sir E. May's *Const. Hist.* vol. ii. p. 495.

was filed by the Attorney-General against the City of London, and its charter was declared by the Court of King's Bench to be forfeited, on the ground that it had exceeded its jurisdiction in the exaction of certain market tolls. The forfeiture was not insisted upon, but the City was allowed to continue to possess its franchises only upon submission to certain regulations—such, for instance, that no mayor, sheriff, or recorder should be admitted until approved by the king—which made it thoroughly subservient to the Crown. After the fall of the capital, *quo warranto* informations were brought against several other towns, and many more hastened to anticipate attack by voluntarily surrendering their charters. Judge Jeffreys, who went the Northern Circuit in 1684, boasted that “he made all the charters, like the walls of Jericho, fall down before him, and that he returned laden with surrenders, the spoils of the towns.” The towns received instead new charters, framing their constitutions on a more oligarchical model, and reserving to the Crown the first appointment of those who were to form the governing part of the corporation.¹ After 1688, however, most of the Corporations resumed their old charters, and the influence of the prerogative was no longer felt. From this time down to 1832 the history of the boroughs is parliamentary rather than municipal. The charters of the Georgian period were framed nearly on the model of those of the preceding era, and in spite of the progress of society, showed the same disregard for the improvement of municipal policy. The freedom of a borough was chiefly valuable for the parliamentary vote it carried

¹ Hallam, *Const. Hist.* vol. iii. p. 455.

with it. Admission into the corporate body was sought mainly with a view to the lucrative exercise of the elective franchise. "A great number of corporations," say the Commissioners of 1835,¹ "have been preserved solely as political engines, and the towns to which they belong derive no benefit, but often much injury, from their existence. To maintain the political ascendancy of a party, or the political influence of a family, has been the one end and object for which the powers entrusted to those bodies have been exercised. This object has been systematically pursued in the admission of freemen, resident or non-resident; in the selection of municipal functionaries for the council and the magistracy; in the appointment of subordinate officers and the local police; in the administration of charities entrusted to the municipal authorities; in the expenditure of corporate revenues; and in the management of corporate property." As a rule the numbers of the privileged freemen were strictly kept down, but political exigencies sometimes created an exception. Thus at Maldon, where the average admission of freemen was seventeen per annum, 1000 were created during the election of 1826. During the same election the Corporation of Leicester spent £10,000 and mortgaged a part of their property to secure the return of a political partisan.² The political abuses connected with the boroughs were swept away by the Reform Act of 1832. Many of the smaller boroughs were disfranchised, the parliamentary boundaries of others were resettled, and the franchise was bestowed on all £10 occupiers, whether freemen or not. But the spirit of reform had not yet

¹ *Rep. Mun. Corp.* 1835, p. 34.

² *Ibid.* p. 54.

spent itself. It was determined to reconstruct the municipal organisation of the boroughs on a broad and popular basis, and to restore their efficiency in local administration.

In 1833 a Royal Commission was appointed to conduct a searching inquiry into the nature and conduct of our municipal institutions. Their Report, which has already been cited, showed that it was an Augæan stable that had to be cleansed. Municipal functions were almost entirely neglected, and jobbery, corruption, and oppression were almost universal. The great mass of the townspeople were excluded from corporate privileges and from any share in town government. The municipal councils for the most part were self-elected, and the members held office for life. In Plymouth, where the population was 75,000, the number of freemen was 437, of whom 145 were non-resident. In Ipswich less than two per cent of the inhabitants enjoyed corporate privileges, and of that two per cent a large number were paupers. In Portsmouth, with a population of 45,000, the number of freemen was 102. The freemen in many boroughs enjoyed exclusive trading privileges, and were exempt from borough tolls and market dues. In Newcastle the payment of these tolls made a difference to one merchant of £450 per annum. In Liverpool the tolls were even heavier. Corporate funds, which were not spent on political corruption, were "frequently expended in feasting and paying the salaries of unimportant officers." There were then 246 boroughs; only 28 of these published any accounts of their expenditure. Pluralism in holding lucrative corporate offices was common. Corporate contracts and

lands were let out to corporators on terms most beneficial to the latter. In some boroughs the Coroner was a small tradesman. In many boroughs where the Recorder had large criminal and civil jurisdiction, he was not necessarily a lawyer. In nearly all boroughs the aldermen were *ex officio* magistrates. The juries were taken exclusively from the freemen, and the administration of justice was tainted with political partisanship. At Haverfordwest the opinion was given that "it was impossible to convict a burgess." The corporate magistrates, apart from political bias, were often wholly unfit for the discharge of judicial functions. At Malmesbury some of the magistrates could not read or write. At Wenlock it was their habit to sign blank warrants. At East Retford a magistrate on one occasion amused himself by fighting the prisoner.¹ The whole Report is instructive reading, and fully justifies the conclusion at which the Commissioners arrived. It appeared in 1835, and very effective legislation followed in the same year. The Municipal Corporations Act, 1835 (5 & 6 Will. IV. c. 76), swept away the abuses laid bare by the Report, it annulled all charters and customs inconsistent with its provisions, and provided a uniform constitution, based on the model of the best-administered existing municipal corporations, which, with slight modifications, should apply to all towns then or thereafter to be brought under the Act. In brief outline the reforms which it effected were these: it took away magisterial powers from the aldermen, provided that the Recorder should be a trained lawyer, abolished all trading monopolies, exemptions, and restrictions, shortened the tenure

¹ *Rep. Mun. Corp.* 1835, p. 38.

of elective offices, gave the franchise to all inhabitant ratepayers, and provided for the honest administration of corporate funds and the efficient discharge of municipal duties. It was at first intended to bring London under the Act, but the intention was temporarily abandoned, and down to the present day the Corporation of London retains its ancient constitution. The Act of 1835, which constitutes the great charter of English municipal liberty, has been amended by no less than forty-two subsequent enactments. The whole, however, are brought together and reproduced in the Municipal Corporations Act, 1882.¹ We have therefore now a complete municipal code, and in the sketch which follows of our existing municipal system the provisions of that Act need alone be referred to.

The Commissioners of 1835 had inquired into the condition of 246 boroughs, but the Act of that year applied to only 178 of these. The rest were left for future treatment, which—still with the exception of the City of London—they received in 1883. Another Commission was appointed in 1876, mainly at the instigation of Sir Charles Dilke, to deal with all boroughs to which the Municipal Corporations Acts of 1835 and 1882 did not apply. These Commissioners inquired into the condition and circumstances of 106 boroughs or reputed boroughs. They reported that in 32 of these municipal government, if it had ever existed, had become extinct; of those in which corporate insti-

¹ Mr. Chalmers, in the work on which this is founded, alludes to the Act of 1882 as "probably the best drafted Act on the statute-book." The learned reader will make a mental exception in favour of certain well-known Acts drafted by Mr. Chalmers himself

tutions—in form at least—still existed, they recommended that 49 should altogether cease to be municipal corporations, and that the remaining 25 should be brought under the Act of 1882. These recommendations were carried into effect by the Municipal Corporations Act, 1883, which declared that no one of these 106 towns and places should any longer be a corporate town or borough, and dissolved all charters, grants, and prescriptions relating to them. Her Majesty in Council then granted new charters to the 25 towns mentioned by the Commissioners as proper places to be brought within the Act of 1882. Every charter granted by Her Majesty to a new borough now extends to it the provisions of that Act. And so the statutory definition of a borough now is: “Any place for the time being subject to the Municipal Corporations Act, 1882.”¹

Creation of New Municipalities

Since Queen Victoria ascended the throne, the population of our towns has more than doubled. Hence beside the 25 boroughs just mentioned, more than 100 new boroughs have been created by charter since 1837. The procedure is as follows :—When a certain unspecified number of inhabitant-householders in a town deem themselves worthy of a municipal government, and wish to try the experiment, they may petition the King in Council to grant them a charter of incorporation, and to extend to the borough thus constituted the provisions of the Municipal Corporations Act. The petition is adver-

¹ Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 15.

tised in the *London Gazette* ; notice of it must also be given to the County Council of the county in which the borough is situated. It is then referred to a Committee of the Privy Council, who direct a local inquiry, in the course of which evidence is taken for and against the proposal. The Committee of the Privy Council which advises upon the petition is empowered to settle a scheme for absorbing into the new corporation the existing local authorities, or for otherwise adjusting their relations with it. Any local authority affected by the scheme may oppose it. If the scheme be opposed, it requires confirmation by Act of Parliament ; otherwise an Order in Council is sufficient. The existing authorities often object to being thus extinguished. Absorption into a higher existence, with loss of personality, may be congenial to Buddhists, but does not always commend itself to our local luminaries. When a charter is granted, it fixes the number of councillors the borough is to have, and the number and boundaries of the wards, if the borough is to be so subdivided. It also provides for the appointment of first officers, and makes such temporary modifications of the Municipal Corporations Act as may be necessary to start the working of the corporate machinery. Subject to this, as soon as the charter comes into effect, the provisions of the Municipal Corporations Act apply to the new-born borough, and clothe it with a ready-made constitution.

Parliamentary Borough : Freeman

Before passing on, however, to give a sketch of our existing municipal system, it is as well to warn the

reader of two facts. In the first place, the so-called "parliamentary borough" has nothing at all to do with municipal government. It is merely an electoral division, an area to which a certain number of representatives in Parliament is assigned. It may or may not coincide with a municipal borough. There are only 142 parliamentary boroughs, and to some of these there is no corresponding municipal area. And when there is both a parliamentary and a municipal borough of the same name, separate lists of voters are always prepared, even where their boundaries are identical: for the franchises are distinct. Then, again, the freemen of a borough have now lost all place in municipal government. Freemen as such have no rights as burgesses. They are entitled to the parliamentary franchise; and their rights to a share in corporate property and in such charities as existed prior to 1835 are carefully preserved; but no claim to exemption from any borough tolls or dues is to be recognised, except in the case of a person who on 5th June 1835 was an inhabitant, or was admitted or entitled to be admitted a freeman, or was the wife, widow, son, or daughter of a freeman, or was bound an apprentice. No person can now be admitted a freeman by gift or purchase, except in one case. Persons of distinction, and persons who have rendered eminent services to the borough may be admitted to be honorary freemen under an Act of 1885; but they do not thereby acquire any vote for the borough, or any share in its property.¹

¹ 48 & 49 Vict. c. 29.

Municipal Government

Where a town, as distinct from a city, is governed by the Municipal Corporations Act, the municipal corporation of the place consists of the Mayor, aldermen, and burgesses, and is named accordingly. Thus, the proper style of the Corporation of Cambridge is "the Mayor, aldermen, and burgesses of Cambridge." Some boroughs, however, generally those which contain a cathedral and a bishop, are entitled to the more dignified name of city, and their burgesses are styled citizens, though for purposes of local government the distinction is purely one of name. The proper style of the Corporation of Oxford, therefore, is "the Mayor, aldermen, and citizens of Oxford."

The original boundaries of municipal boroughs were not settled on any definite principle. They intersected parishes, unions, and counties. Boroughs, in short, were carved out of the surrounding country in the same haphazard way as other local areas in England. But now full power is given to the Local Government Board, by s. 54 of the Local Government Act of 1888, and s. 36 of the Local Government Act of 1894, by Provisional Order to make any alteration that seems expedient in the boundaries of a borough. Many orders have already been made under these sections.

The municipal franchise rests on a firm basis of ratepaying residence. Every person who occupies a house, warehouse, shop, or other building in the borough

for which he pays rates, and who resides within seven miles of the borough, is entitled to be enrolled as a burgess. A single woman or a widow may vote at any municipal election; but a married woman, though qualified by occupation and payment of rates, may not vote, even though her name has been put on the burgess list. No woman can serve as a town councillor, or hold any corporate office. The main rights and duties of a burgess are—(1) that he is entitled to vote at the election of councillors and elective auditors; (2) that he is eligible for any corporate office, and is liable to a fine if on election he refuses to serve; (3) that he is eligible and liable to serve on borough juries. The overseers annually make out the burgess list for each parish in the borough for submission to the revision court. The revising barrister revises the municipal list of voters at the same time that he revises the parliamentary lists.

The governing body of the borough is the Council, which consists of the Mayor, aldermen, and councillors. The number of councillors is fixed when the borough is incorporated under the Act. They are elected by the municipal voters, *i.e.* by the persons who are enrolled as burgesses. They must be persons who are municipal voters, or who, being qualified except in the matter of residence, reside within fifteen though beyond seven miles from the borough, and have also an extra property qualification. Any municipal voter may be elected a councillor, unless he is interested in any contract made with the Council, or is in holy orders, or the regular minister of a dissenting congregation. Elections to the Council are held on the 1st of November in every year.

The term for which a councillor holds office is three years, and every year one-third of the councillors go out by rotation. An outgoing councillor is eligible for re-election.

The election of councillors is conducted on the model of a parliamentary election. If a borough is not divided into wards the Mayor acts as returning-officer. If it is divided into wards, elections to the Council are held simultaneously in the different wards, and an alderman assigned for the purpose to each ward acts as returning-officer. If more candidates are nominated than there are vacancies, and a poll is demanded, the election is conducted by ballot, as nearly as may be in accordance with the provisions of the Ballot Act, 1872. In many boroughs the elections are mainly governed by considerations of party politics; a municipal election is regarded as a means of feeling the political pulse of the inhabitants, and purely local questions seem to have but little influence on the result. Persons guilty of corrupt practices at a municipal election are liable to be punished in the same way as if the offence had been committed at a parliamentary election. If it be desired to question an election on the ground of corrupt practices thereat, the procedure is by petition to the High Court. The petition is tried by a Commissioner sent down by the High Court, who must be a barrister of not less than fifteen years' standing. The procedure before him for the most part resembles the procedure in a parliamentary election petition.

The number of the aldermen is one-third of that of the councillors, which, as we have seen, is a number that varies with the size of the borough. Any person

who is, or who is qualified to be, a councillor, may be elected an alderman. The aldermen are elected by the Council at the ordinary quarterly meeting on the 9th of November. The mode of election is by voting papers, signed and personally delivered to the chairman of the meeting. In the case of equality of votes the chairman has a casting vote. If a councillor is elected an alderman, he thereby vacates his office as councillor. The aldermen hold office for six years, one-half of the whole number retiring by rotation every three years. Their longer tenure of office is intended to give an element of stability and continuity to the policy of the Council. If the Mayor is temporarily incapacitated, an alderman may act for him, and, as we have seen, where a borough is divided into wards, an alderman acts as returning-officer; but apart from what has been mentioned, an alderman has no greater powers or other functions than an ordinary councillor.

The Mayor is the chief officer of the corporation. He has precedence of all persons in the borough. The Mayor is elected by the Council from among the aldermen or councillors, or persons qualified to be such. An outgoing alderman is eligible, and as a fact an alderman is usually selected for the office. As he represents the borough on public occasions, and especially when it is dispensing hospitality, he generally receives a salary, the amount of which is fixed by the Council. The election takes place on the 9th of November at the ordinary quarterly meeting of the Council, and the statute directs that it shall be the first business transacted at the meeting. The Mayor is *ex officio* a magistrate for the borough, and chairman of all meetings of the Council. As chair-

man of the Urban District Council, he is also a justice of the peace for the county. With the exception of the Mayor and ex-Mayor, all borough magistrates are now appointed by the Crown. The Mayor is the returning-officer in parliamentary elections, and in the election of councillors if the borough is not divided into wards. He is also an *ex officio* member of the Watch Committee. If he dies or becomes bankrupt while in office, the Town Clerk must call a meeting of the Council to fill up the vacancy. If he is temporarily incapacitated by illness or otherwise, he may appoint a deputy.

We have now discussed the three constituent factors of the Council,—namely, the Mayor, the aldermen, and the councillors. Directly or indirectly, as we have seen, they are all chosen from and elected by the burgesses at large. Neither the Crown nor any Government Department takes any part in their election. Our boroughs enjoy complete independence as regards the appointment of their governing body.

The officers of a borough are the Town Clerk, the Treasurer, and “such other officers as have usually been appointed in the borough, or as the Council think necessary.” The Town Clerk holds his office during the pleasure of the Council, and his salary is fixed by them. He has the custody of the charters, deeds, records, and documents of the borough, and it is his duty to issue the summonses for the meetings of the Council, and to act as secretary to the Council at their meetings and otherwise. The Treasurer, too, holds office during the pleasure of the Council, and his salary, if any, is fixed by them. It is his duty to receive and make all payments on behalf of the corporation. All officers appointed by

the Council must give security for the due execution of their duties, and there are stringent provisions for making them account.

The officers above referred to are the ordinary staff of every borough, but many boroughs have, in addition to their normal functions, wholly or in part the organisation of a county, having their own Commissions of the Peace and Courts of Quarter Sessions; and this of course involves additional officers, whose duties will be described hereafter.¹ Under the Sale of Food and Drugs Act, 1875, the Council may be required by the Local Government Board to appoint a public analyst.

The duties and powers of the Council must next be considered. The Council must hold four quarterly meetings every year for the transaction of general business. The Mayor may also call a meeting at any time. If the Mayor refuses to call a meeting, five members of the Council may call it. The Town Clerk circulates a paper of the agenda three days before the meeting. The Mayor, or in his absence the deputy-mayor or an alderman, takes the chair. Minutes of the proceedings are taken, and are confirmed by the signature of the chairman at the same or the next meeting. The minutes may be inspected and copied by any burgess on payment of a shilling.

The Council may appoint committees "for any purposes which, in the opinion of the Council, would be better regulated by means of committees"; but the acts of the committees must be submitted to the Council for their approval.

¹ See *post*, pp. 97, 99.

The functions of the Council are legislative as well as administrative.

The Act empowers them "to make such by-laws¹ as to them seem meet for the good rule and government of the borough, and for the prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough." The by-laws may be enforced by fine not exceeding £5. In the case of an Act of Parliament every citizen is bound to know and obey it, even though it comes into force before it can be printed or obtained by the public; but as regards borough by-laws a concession is made to human infirmity, and no by-law can come into force until it has been promulgated for forty days. They must also be submitted to the Local Government Board, or in some cases to the Home Secretary; and the Privy Council has power to disallow any by-law wholly or in part.

The administrative functions of the Council may be divided into ordinary and special functions. A large number of boroughs have special Acts under which their Councils are entrusted with special powers to carry out particular works of local utility, such as water or gas supply. Apart from these, there are numerous general Acts of Parliament which impose important duties on the Council of every municipal borough. For instance, the Council of the borough is now invariably the sanitary authority of the place, and has as such all the powers and duties of an ordinary Urban District Council

¹ A by-law is a rule made by a body corporate, and binding on a certain class of persons, or over a certain district. It must not be retrospective, or at variance with the general laws of the realm. It must be reasonable in itself, and tend to accomplish the objects for which the body making the by-law was incorporated.

under the Public Health Acts, 1875 to 1896.¹ Again, in a borough where the population exceeds 10,000 the Council is the Education Authority for the borough for the purposes of Elementary Education. The Council of a county borough is the Education Authority for both Higher and Elementary Education.² So, again, the Council is the local authority to take action under the Housing of the Working Classes Acts, the Cemeteries Acts, and the Acts authorising the establishment of free libraries, museums, and schools of art.

The ordinary functions of the Council consist in the management of the corporate property, the maintenance of a proper police force, the regulation of markets and burial-grounds, the levying of rates, and, when necessary, the raising of loans. In the absence of special local Acts it is the duty of the Council to see that the town is properly paved, lighted, cleansed, and supplied with gas and water; and when by any local Act these duties are entrusted to special Trustees or Commissioners, power is given to them to make over their property and functions to the Council. The Council has the same powers and duties as regards borough bridges that the County Council have in the case of county bridges. The Council may purchase land not exceeding five acres for borough buildings, and may build "a town-hall, council-house, justices' room, with or without a police station and cells, or a quarter and petty sessions house, or an assize court-house, with or without judges' lodgings, or a polling station, or any other building necessary for any borough purpose." The Council are not allowed to sell, or mortgage, or let out on long lease, any of the

¹ As to these, see ch. vi., *post*, p. 127. ² See *post*, p. 159.

borough land without the approval of the Local Government Board. An exception is made in favour of long leases of land for the purpose of working-men's dwellings, under specified regulations. The misapplication of corporate property (more especially for the purpose of any parliamentary election) is severely punished.

A Borough Council is a local authority for the purposes of the Small Dwellings Acquisition Act, 1899, and as such may make advances to residents in houses not exceeding £400 in value, for the purchase of such houses, and may borrow money for the purpose (s. 9). It is also a local authority under the Open Spaces Act, 1906.

A municipal borough with a population of 50,000 may take action under the Unemployed Workmen Act, 1905, the object of which is to establish an organisation in populous boroughs and urban districts with a view to the provision of employment or assistance for unemployed workmen in proper cases (ss. 1 and 2 (1)).

Borough Finance

This subject may be considered under the three heads of Expenditure, Loans, and Accounts.¹ All moneys received by a borough in the ordinary course of its affairs (*e.g.* all rates, fees, and the rents and profits of the corporate property) are paid into a fund called the Borough Fund, and out of this fund is drawn all the money necessary for the ordinary expenditure of the borough. If, as is generally the case, the fund is not sufficient to meet the expenditure, the Council has no power to contract any temporary loan; it must from

¹ The subject of local expenditure and taxation is dealt with at length by Mr. A. J. Wilson in another volume of this series.

time to time cause a rate to be levied in the borough to make up the deficiency. This is called the Borough Rate. The Council assesses the amount to be contributed by each parish. The assessment is usually based on the poor-rate valuation, but a special valuation may be made, if necessary. The overseers of each parish are responsible for the collection of the rate. If it should ever happen that the fund is more than sufficient to meet the ordinary expenditure of the borough without the aid of a rate, the surplus must be applied under the direction of the Council "for the public benefit of the inhabitants and improvement of the borough." But the Borough Council may not make rates for the purpose of creating a surplus to be so applied, nor can it make any binding agreement to apply the surpluses which may arise in future years to any particular object.

All payments to the Treasurer of a borough are paid into the borough fund; all payments to and out of the borough fund are made to and by him. Some payments, such as the regular quarterly salaries, may be made out of the fund without an order of the borough Council, these are specified in part i. of the fifth schedule to the Act of 1882. Other payments (specified in part ii. of that schedule) may not be made without an order of the Council, which must be signed by three members of the Council, and countersigned by the Town Clerk.¹

The extraordinary expenditure of the borough is not defrayed out of the borough fund. Money needed for works of utility of a more or less permanent character is

¹ See s. 141 of the Municipal Corporations Act, 1882, and ss. 2 and 4 of the Borough Funds Act, 1872 (35 & 36 Vict. c. 91), and ss. 1 and 7 of the Borough Funds Act, 1903 (3 Edw. VII. c. 14).

raised by a loan, repayable by instalments and charged on the corporate lands and rates. The borrowing powers of municipal corporations are of great extent and variety. Separate loans may now be raised, under general Acts of Parliament, for ordinary municipal purposes, for cemeteries, lunatic asylums, parks, baths, hospitals, sewerage, and other sanitary works, industrial and reformatory schools, libraries, public buildings, and dwelling-house improvement schemes; while under local Acts money may be borrowed for any purpose that Parliament can be induced to sanction. All loans under general Acts of Parliament must be repaid within a specified term of years, either by annual instalments of principal and interest, or by a sinking fund; and the consent of one of the central authorities to the loan must be obtained before the money is borrowed. The authority that must give its consent is in some instances the Treasury, in others the Home Office, in a few cases (such as harbours and piers) the Board of Trade, but usually—and especially with reference to sanitary works and improvement schemes—the Local Government Board.¹ A local inquiry, after due notice, is then held, and if the loan is approved a term of years is fixed by the central authority within which the repayment is to be made. It is only fair that the cost of a town improvement, which will last for several years, should be spread over an equivalent period, and not charged on the income of the year in which it is incurred.

In order to escape from the control of any Government Department, borough Councils frequently apply direct to Parliament for a private Act to authorise some

¹ See the Local Authorities (Treasury Powers) Act, 1906 (6 Edw. VII. c. 33).

proposed expenditure. But a check has been placed on this method also ; a municipal corporation may not now pay the cost of promoting any Bill in Parliament out of the borough fund without the consent of an absolute majority of the whole number of the borough Council, and also of a public meeting of ratepayers convened for the purpose.¹ Most of the municipalities have availed themselves largely of their borrowing powers. According to the Local Taxation Returns of 1902-1903 the City of London had an outstanding debt of £6,285,502, and the total indebtedness of the other boroughs was £185,015,653.

The accounts of most local authorities are now audited by the Local Government Board, but most boroughs are exempt from this jurisdiction. The audit is conducted by three borough auditors, two elected by the burgesses, called elective auditors, and one appointed by the Mayor, called the Mayor's auditor. An elective auditor must be qualified to be a councillor, but must not be a member of the Council. The Mayor's auditor must be a member of the Council. The Treasurer must make up his accounts half-yearly, and within a month of making them up must submit them with the necessary papers and vouchers to the auditors. After the second audit of the financial year the Town Clerk must make a return to the Local Government Board of the receipts and expenditure of the corporation for the year. The return must be sent within a month of the completion of the audit. It is the duty of the Local Government Board to prepare an annual abstract of these returns for submis-

¹ See s. 4 of the Borough Funds Act, 1872 (35 & 36 Vict. c. 91), and s. 1 of the Borough Funds Act, 1903 (3 Edw. VII. c. 14). The Local Loans Act, 1875 (38 & 39 Vict. c. 83), also lays down general rules for the management of loans to local authorities.

sion to Parliament. A somewhat curious check is provided to prevent the application of borough funds to improper or unauthorised objects. The Act of 1882 provides that every order of the Council for the payment of money out of the borough fund "may be removed into the Queen's Bench Division of the High Court of Justice by writ of *certiorari*, and may be wholly or partly disallowed or confirmed, with or without costs, according to the judgment and discretion of the Court." The High Court is thus constituted a kind of casual auditor, whose aid can be called in when the regular audit fails. But recourse is very seldom had to this *deus ex machina*.

A serious defect in our municipal system is the absence of anything in the nature of a town budget, showing its financial position, and estimating its financial requirements for the year to come. This matter has been already discussed at the end of chap. ii.

Different kinds of Boroughs

So far what has been said in this chapter has been equally applicable to all boroughs. There are, however, several distinct classes of boroughs known to the law; though the distinctions between these classes relate chiefly to the administration of justice and the control of the police, and do not affect the scheme of municipal government, which, as has been already pointed out, is of the same type in all boroughs.

1. *Counties of Cities; Counties of Towns*.—Bristol, Nottingham, Norwich, Exeter, and some other ancient boroughs have all the organisation of a county. They have their own Commissions of the Peace and

Courts of Quarter Sessions, and each year they appoint a Sheriff. This appointment is made at the quarterly meeting of the Council on the 9th November in each year, immediately after the election of the Mayor. There are nineteen of these counties of cities or towns; they are wholly independent of the surrounding counties; the county authorities have no jurisdiction within their area.

2. *County Boroughs*.—This special class of borough was first created by the Local Government Act of 1888. There are 72 county boroughs in England and Wales; most of them have a population of not less than 50,000. The same place may be both a county of a city or town, and a county borough; though most county boroughs are not counties of towns; while a few counties of cities or towns, such as Lichfield and Poole, are not county boroughs. A county borough is practically exempted from the jurisdiction of the County Council of its county; its own borough Council has in fact most of the powers conferred by the Act of 1888 upon County Councils, except as to parliamentary elections. But the constitution of the borough Council is unchanged by the new powers conferred on it. It continues to act as a borough Council; and it is the County Council for the area of the borough as well. A county borough makes no contribution (with a few unimportant exceptions) to the expenses incurred for county purposes. And this has involved the necessity of making an elaborate adjustment of the financial relations between the county borough and its county in respect of local taxation, licences, and probate duties, which may be revised by order of the Local Government Board after every five years. But if no assizes be held in the

county borough, it must contribute towards the cost of the county assize.

The Licensing Act, 1904, under which compensation may be paid for the non-renewal of a license for the sale of intoxicating liquors, applies to a county borough as if it were a county, with the substitution for Quarter Sessions of the whole body of justices acting in and for the borough (s. 8 (2)).

3. *Boroughs having a separate Court of Quarter Sessions.*

—There are 111 of these. Each such borough has a Recorder and a Clerk of the Peace; it also, as a rule, elects its own Coroner.¹ All these boroughs, if not county boroughs, are part of the adjoining county and are assessable to the county rate; they pay the expenses of the prosecution and maintenance of all prisoners committed by the borough magistrates for trial at the county assizes. But a borough which has a Court of its own and a population which exceeds 10,000, does not contribute towards the expense of the Court of Quarter Sessions for the county; and the burgesses of such a borough are not bound to serve as jurymen at that Court.

In borough Quarter Sessions the justices do not act as judges. The sole judge of the Court is the Recorder, who must be a barrister of not less than five years' standing. He is appointed by the Crown, on the recommendation of the Home Secretary. He holds office during good behaviour, is *ex officio* a justice for the borough, and has precedence next after the Mayor. He may not be an alderman or councillor for the borough, nor may he sit for it in Parliament. In the case of unavoidable absence he may appoint a qualified

¹ But see s. 38 of the Local Government Act, 1888.

barrister to act as his deputy for the next ensuing sessions. The criminal jurisdiction of the Recorder is the same as that of a Court of Quarter Sessions in the county, and the procedure in court is strictly analogous. But the Act prohibits him from making or altering any borough rate, except on an appeal, or exercising any licensing jurisdiction.

In eighteen of these boroughs there is also by prescription a Borough Court of Civil Jurisdiction, of which the Recorder is in most cases also judge (*e.g.* the Mayor's Court, London; the Court of Passage at Liverpool; the Salford Court of Record; the Tolzey Court at Bristol, etc.). The jurisdiction of such court is generally limited to causes of action arising within the borough, but unlimited as to the amount which can be claimed in the action.

Incidental to a Court of Quarter Sessions are the offices of Clerk of the Peace and Coroner. The Clerk of the Peace is appointed by the Council, and is usually paid by salary. The Coroner is only appointed when the population of the borough exceeds 10,000; otherwise the county Coroner acts. In a borough that has a population over 10,000, a borough Coroner is appointed by the Town Council. Any "fit person," who is not an alderman or councillor, is eligible. The Coroner holds office during good behaviour, and is paid by fees, which must be certified for by the Recorder. The duties of the Coroner and the procedure on inquests are the same as in the county. In boroughs of this class three or more justices, and also at least one medical practitioner, must be annually appointed to act as visitors of houses licensed to receive lunatics;

and this appointment must be confirmed by the Recorder.

Every borough that has no separate Court of Quarter Sessions (even though it be a county borough) must contribute to the expense of the Assizes and the Quarter Sessions of the county, and also of the county coroners. The Council of any such borough may at any time petition Her Majesty in Council to grant to the borough a separate Court of Quarter Sessions. The petition must specify the grounds of the application, and state the amount of the salary that the borough is willing to pay its Recorder. If a court be granted to any borough after 1st June 1888, the borough will still remain liable to the county rate.

4. *Boroughs having a separate Commission of the Peace.*—A separate Commission has been granted to many boroughs, and may be granted to others, on application under s. 156 of the Municipal Corporations Act, 1882. Such a separate Commission does not of itself exempt a borough from the county rate, or deprive the county justices of their right to act within the borough at Petty Sessions, or in matters concerning the borough at Quarter Sessions. It only enables the borough justices to act in the borough as if they were county justices acting in and for a distinct petty sessional division. But, in practice, it is rare for the county justices to sit in a borough having a separate Commission of the Peace. Such a borough, too, is a separate licensing division. The Mayor is *ex officio* a magistrate for the borough during his year of office, and for one year afterwards. Every other borough magistrate is appointed by the Crown; he must, while acting as such, reside in or

within seven miles of the borough, or occupy a house, warehouse, or other property in the borough; but he need not be a burgess, or have any qualification by estate such as is required for a justice of a county. The Council must provide a proper room for the justices to meet in. The borough justices appoint their own clerk, who must not be a borough councillor.

In twenty-one of our larger boroughs, a Stipendiary Magistrate has been appointed. The Council of any borough that desires the appointment of a Stipendiary Magistrate may petition the Home Secretary to appoint one. If appointed, the Stipendiary holds office during Her Majesty's pleasure. He must be a barrister of not less than seven years' standing, and is paid by yearly salary. He has the powers of two justices acting together; in other words, he is a Court of Petty Sessions.

5. *Boroughs having a separate Police Force.*—Most of our larger boroughs maintain a police force of their own, separate from the county police. They do this at their own expense. The supervision and control of the police force is confided to a committee of the Council called the Watch Committee. This committee must not exceed in number one-third of the whole Council; the Mayor must always be a member of it. The Watch Committee must appoint "a sufficient number of fit men to be borough constables," and is empowered to make rules for their regulation and guidance. The Watch Committee has also power to dismiss men from the force. If in any emergency the borough police force is not sufficient, the justices having jurisdiction in the borough may, under an Act of 1831, appoint special constables to assist the regular policemen. The ex-

penses of the police force are usually paid out of the borough fund; but in some boroughs a special fund, called the Watch Rate, is raised to meet them. If, on inspection, the police force of any borough is certified to be efficient, the County Council makes, out of moneys received from the Imperial Exchequer, a grant to the borough amounting to at least half the cost of the clothing and pay of the men. The Treasury also contributes towards the cost of criminal prosecutions. No new police force can be established in any borough which has less than 20,000 inhabitants; and no borough which according to the census of 1881 had a population of less than 10,000 may have a separate police force at all.

6. *Boroughs which according to the census of 1881 had a population of less than 10,000.*—A borough which in 1881 had less than 10,000 inhabitants is regarded by the Legislature as a very poor and sickly entity—a thing not worthy of the name of a borough, that had far better allow itself to be submerged in the county. It is distinctly encouraged to petition Her Majesty in Council to revoke the grant to it of a Court of Quarter Sessions, and also the grant of a separate Commission of the Peace. If it does not, it must pay the salaries of its own Recorder, Clerk of the Peace, and Clerk to the borough justices, and yet contribute to the cost of the County Sessions as well. It cannot have a separate police force of its own: the county police keep order in its streets—men over whom the borough justices have no control and can exercise no supervision, for they are appointed by the joint committee of the County Council and the county magistrates. All the former powers of the Council and justices of such a borough in respect of

police, public analysts, pauper lunatic asylums, reformatory and industrial schools, fish conservancy, contagious diseases of animals, destructive insects, explosives, gas meters, and weights and measures were by section 38 of the Local Government Act, 1888, transferred to the County Council. And subsection 5 of that section expressly declares that the area of such a borough "shall for the purposes of the above-mentioned Acts and all other administrative purposes of the County Council be included in the county, as if the borough had not a separate Court of Quarter Sessions, and shall accordingly be subject to the authority of the County Council and the county coroners, and may be annexed by the County Council to a coroner's district of the county, and the parishes in the borough shall be liable to be assessed to all county contributions." Nevertheless the town remains a borough: it has still a Mayor and corporation; it still audits its own accounts; it still has power to manage its own municipal affairs in its own independent fashion.

Central Control

Only one other point remains to be noticed, and that is the relation of boroughs to the Central Government. As we have seen, the controlling power of the Central Executive is purely negative. It can disallow certain things, such as parting with corporate property or the creation of loans on the security of the rates, but there its power of interference begins and ends. In all other matters a municipality enjoys, within the limits of the law, an unfettered liberty of action.

CHAPTER V

THE UNION

History of Unions—The Guardians of the Poor—Their Election—
Their Duties—Central Control

FOR poor-law purposes primarily, but incidentally for other purposes also, England is divided into unions. A union is the area which is under the jurisdiction of a Board of Guardians. For the most part it consists, as its name implies, of a group of poor-law parishes; but the constitution of a union may be conferred on a single parish, if the population warrant it. The statutory definition of a poor-law union is "any parish or union of parishes for which there is a separate Board of Guardians."¹ There are 657 unions, of which a few are single parishes, and the rest are groups of parishes.

Both unions and Boards of Guardians are unknown to the common law of England; both are entirely the creatures of statute. Our present poor-law system dates from 1601, when the great statute of Elizabeth (43 Eliz. c. 2) was passed.

This measure was rendered necessary by the decay of

¹ 52 & 53 Vict. c. 63, s. 16.

agriculture, the enclosure of commons and other land, the decline of villenage, and many other social and economic changes, which rendered it more and more difficult for the peasant class to earn an honest living. The Act directed that officers should be appointed for each parish, called "overseers of the poor," whose duty it should be to "set to work" all paupers and their children, and to raise a common fund "for the necessary relief of the poor" by "taxation of every occupier of lands, houses, tithes, coal-mines, or saleable underwoods in the parish." This fund the vestry of each parish formerly administered. The churchwardens were overseers *ex officio*.

The relief of the poor was thus entrusted to the parishes; and each separate parish was to maintain its own poor. There were many reasons for this. To begin with, the parish had by 1601 in most parts of England effaced the Saxon township, the Norman vill, and the feudal manor, and become the solely recognised area of local administration. Moreover it was still largely an ecclesiastical area; and the relief of the poor had so long been left to the monasteries, that, though the monasteries were now dissolved, it still was deemed a quasi-ecclesiastical matter. But England was full of "vagrom" men and women, who wandered from one parish to another, seeking work, or seeking what they might devour. It was soon found necessary to take some steps to compel all such wanderers to return to the parish whence they came. This was done by an Act passed in 1662, the 13 & 14 Car. II. c. 12. The recitals of that Act state in graphic language the evils which it proposed to remedy: "Whereas the necessity,

number and continual increase of the poor, not only within the cities of London and Westminster, with the liberties of each of them, but also through the whole kingdom of England and dominion of Wales, is very great and exceeding burthensome, being occasioned by reason of some defects in the law concerning the settling of the poor, and for want of a due provision of the regulations of relief and employment in such parishes or places where they are legally settled, which doth enforce many to turn incorrigible rogues, and others to perish for want, together with the neglect of the faithful execution of such laws and statutes as have formerly been made for the apprehending of rogues and vagabonds, and for the good of the poor; for remedy whereof and for the preventing of the perishing of any of the poor, whether young or old, for want of such supplies as are necessary"; and, again, "whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy; and when they have consumed it, then to another parish; and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers." And so the Act proceeds to empower the justices to make an order that such wanderers be conveyed back to the parish to which they properly belonged.

But no one who had been born in a parish, or had occupied a house therein worth £10 a year or over, or

had resided in any house in the parish forty days, could be "removed" under this Act. Thus arose the law of "poor-law settlement," which took shape subsequently in an important Act of William and Mary (3 W. & M. c. 11, passed in 1691). Any pauper who became chargeable to one parish could be removed thence to the parish in which he was "last legally settled." A man was said to gain a settlement in any parish in which he held an estate in land, however small, or rented a tenement worth £10 a year, or served as a parochial officer, or paid parochial taxes, or was bound apprentice to any parishioner. A woman might also gain a settlement by marriage; she at once acquired her husband's settlement, if he had one. If a pauper had never gained a settlement for himself, he took his father's or his mother's settlement; if neither of his parents had ever had a settlement, he was deemed to be settled where he was born. Without some such law of settlement the Act of Elizabeth would have been unworkable.

Then followed constant litigation between parishes. Orders for the removal of paupers from one parish to another were made recklessly by interested justices, and there were many costly appeals to Quarter Sessions and thence to the Court of Queen's Bench. Sensible men saw that if a larger area was taken as the unit for poor-law purposes, much of this expensive litigation between neighbouring parishes would be saved. The parish poorhouse, too, was a miserable and sadly mismanaged institution. Hence as early as 1662 we find parishes uniting for poor-law purposes under special Acts, which enabled them to maintain their joint poor

•

in one common workhouse. By a statute passed in 1782 (22 Geo. III. c. 83—commonly known as Gilbert's Act), any parishes that could agree on such a course were authorised to combine for purposes of indoor relief. By the same Act, new officers, called guardians of the poor, were created to act with the overseers and churchwardens.

But the present systematic scheme of unions covering the whole country was created by the Poor Law Amendment Act, 1834 (4 & 5 Will. IV. c. 76). By the same Act the relief of the poor was taken out of the hands of the overseers and transferred to Boards of Guardians, which were then created for the purpose. Parish mismanagement and the policy of the bastardy laws had completely demoralised the rural poor. One of the first works of the Reformed Parliament was the entire remodelling of the poor-law administration. A central body of Commissioners, with very large powers, was appointed, to whom was entrusted among other matters the duty of grouping parishes into unions. These Commissioners a few years later became a permanent body, under the title of the Poor Law Board; and in 1871 the Poor Law Board was merged in the Local Government Board.



In forming unions, they went on the general principle of taking a market-town as a centre, and uniting the surrounding parishes, the inhabitants of which resorted to its market. It was supposed that such a centre would be convenient for the attendance of guardians and parish officers. At the same time care was taken to keep the union small enough to enable the guardians to have personal knowledge of all the details of its

management. Unions under the former Acts were respected. The situation of existing workhouses and other local circumstances and feelings were allowed to modify the general plan. Little or no respect was paid either to municipal boundaries or to the old division of the land into hundreds, or to any other area of local government, except the parish. The result is that the unions are very unequal in size and population, and often very irregular in form. In 1894, out of 649 unions, 183 still cut county boundaries, notwithstanding the efforts made by the Boundary Commissioners appointed in 1887. But this has been gradually put right by the Local Government Board, which has full power to create new unions and to dissolve existing ones, or to alter their boundaries by transferring parishes from one union to another. Nevertheless, the number of unions in England and Wales has remained practically stationary; it was 647 in 1877, 648 in 1892, and it is now 657. For certain purposes unions are grouped by the Local Government Board into what are called "union counties," but the area of such counties does not correspond with the county properly so called of the same name.¹

The governing body in every union is a Board of Guardians. To this body in 1834 was confided, subject to the efficient control of the Poor Law Board, the whole administration of the relief of the poor and the management of the workhouses. Many other functions were subsequently bestowed on them. In

¹ The history and working of the poor-laws is the subject of another volume of this series: *The Poor Law*, by Rev. T. W. Fowle, M.A., second edition, 1898.

1855 the guardians and overseers of any rural parish were made the ultimate authority to enforce the provisions of the Nuisances Removal Act and the Diseases Prevention Act, which were both passed in that year. From 1872 to 1894 the guardians were the sanitary authority in every rural district. And under an Act of 1878 whenever the area of a union was coincident with the area of a highway district, the guardians might be constituted the highway authority, with all the powers of a district Highway Board. From 1863 to 1878 it was also the duty of the Board of Guardians to supervise the sanitary condition of all bakehouses. But all these powers and duties are now transferred to the District Council. So by the Union and Parish Property Act, 1835, the Board of Guardians was empowered, with the approval of the Local Government Board, to sell, exchange, or let the property of any parish within its union. But this power is now vested in the Parish Council.

In the country generally, apart from the Metropolis, the guardians until 1894 consisted of two classes, namely, *ex officio* guardians, and elective guardians who were subject to a property qualification. The justices of the peace resident within the area of the union were the *ex officio* guardians. The property qualification of the elective guardians was fixed by Government at £5 a year. The persons entitled to vote at the election of guardians were the owners and ratepayers of the electing parish. The system of plural voting prevailed, and a person might have from one to six votes, according to his property qualification. A resident owner might vote both as owner and ratepayer,

and therefore, given a sufficient property qualification, might register twelve votes. A non-resident owner might appoint a proxy to vote for him. A contested election was conducted by means of voting papers, delivered at the house of each voter or proxy. And in most parishes the guardians only held office for a twelvemonth ; so that there was an election once a year.

The Local Government Act of 1894 put an end to all these electoral arrangements. It abolished the *ex officio* guardians, the elective property qualification, the plural vote, proxies, and the house-to-house delivery of polling papers. The guardians are now elected by the parochial electors by ballot. By the same Act all sanitary powers were taken away from the guardians and conferred on the Rural District Council. Yet at the same time a most intimate connection is maintained between this new body and the Board of Guardians in every rural district. For every rural district councillor is necessarily and inevitably a guardian of the poor as well. He represents his own parish on the Board of Guardians for the union, without any separate election thereto ; and this although the Rural District Council and the Board of Guardians are entirely distinct bodies. But in an urban district the Board of Guardians and the District Council are still elected separately and may consist of entirely different persons.

The wisdom of this new arrangement in the rural districts has been much questioned. It is urged that the work of a district councillor is different from that of a poor-law guardian, and requires somewhat different qualifications. Why then must the same man be both ?

A good councillor, it is said, may be an inefficient guardian, or *vice versa*: an efficient man may not have leisure to serve properly in both capacities. The answer is, that it has been found by experience that if the duties of any such post are increased, superior men will seek election to it; but that capable men will not come forward as candidates for an office in which their powers are limited, and their opportunities of usefulness are scanty. Moreover, the work that is now divided between the Board of Guardians and the Rural District Council is practically the same as that which the Board of Guardians dispatched unaided prior to 1894.

Present Constitution of the Board

Every Board of Guardians is a body corporate, called by the name of "The Guardians of the Poor of the —— Union (or of the parish of ——) in the county of ——." It has perpetual succession and a common seal, and may sue and be sued and take and hold land in that name, without licence in mortmain. In any action or indictment relating to any property belonging to the Board, it is sufficient to lay the property in the Board of Guardians by that name. All guardians now are elected. They hold office for three years; one-third, as a rule, retire each year. There are no longer any *ex officio* or nominated guardians. The parochial electors of each parish directly elect the bulk of the members. The number of guardians representing each parish is originally fixed by the Order creating the union; but may be subsequently altered by either the Local

Government Board or the County Council (or where unions cross county boundaries, by the joint committee of the two County Councils). As a rule, every parish which has a population of not less than 300 sends at least one representative to the union; but a parish with a population of less than 300 may by an Order of the Local Government Board or the County Council be joined to some neighbouring parish for the purpose. This means practically the merging of the smaller in the larger parish. On the other hand, a parish may be divided into wards, and one or more guardians allotted to each ward.

Guardians, as such, are not now elected for any parish in a rural district. It is only in urban districts that a separate election of poor-law guardians is held. The electors are the "parochial electors" of each parish or ward. The election must be conducted in accordance with the rules laid down by the Local Government Board in an Order dated 1st January 1898. The election is by ballot and subject to the provisions of the Ballot Act, 1872, the Municipal Corporations Act, 1882, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. Each elector may give one vote and no more for each of any number of candidates not exceeding the number to be elected.

A woman, even a married woman, may be a guardian. No property qualification is now required. Any person is qualified to be elected a guardian who is a parochial elector of some parish within the union, or has resided in the union during the whole of the twelve months preceding the election, or, in the case of a parish which lies wholly or in part within the area of a borough

(whether a county borough or not), who is qualified to be a councillor for that borough. No one, however, may be elected a guardian who is a paid poor-law officer of a union or parish anywhere in England or Wales, or is an infant or alien, or, has within twelve months before the election received union or parochial relief, or has within five years before the election been adjudged bankrupt or convicted of a crime, or is concerned in certain contracts with the Board. If any guardian is absent from all meetings of the Board for more than six consecutive months, except through illness or for some other good cause approved by the Board, he vacates his seat. And any guardian, who is also a rural district councillor, will apparently vacate his seat on the Board of Guardians as well as on the District Council, if he has without good cause been absent for more than six months from all meetings of the District Council, however regularly he may have attended the meetings of the Board.

As soon as a Board is thus constituted it may add to its number not more than two persons from outside its own body, who are qualified to be guardians of that union; and any person so elected will be an additional guardian and a member of the Board. So, too, the Board when constituted may elect a chairman or vice-chairman from outside its own body, provided he be qualified to be a guardian of that union; and such chairman or vice-chairman will also be an additional guardian and a member of the Board. Such additional guardians are not, however, district councillors even in a rural district; they merely attend when poor-law business is taken; and so do the representatives of

parishes which, though comprised in the union, are not within the rural district.

Duties of the Guardians

The primary duty of the guardians is to relieve the poor. The overseers of a parish can only give relief temporarily and in urgent cases. Every union has its workhouse, or a share in a workhouse, in which the "impotent poor" and the pauper children are housed, clothed, and fed, and the casual poor temporarily relieved. The Board of Guardians supervises the management of the workhouse and the pauper schools and, subject to confirmation by the Local Government Board, it appoints the relieving officers and the medical officers for the union, and the workhouse masters, chaplains, and schoolmasters. The guardians, too, must take care that the inmates of the workhouse do their task-work and observe the rules of the house ; and they must also, so far as possible, provide work for every able-bodied male person who is in receipt of outdoor relief. No one can demand outdoor relief as a right ; but, if in need, he can insist on being received into the workhouse of the union in which he is, until it is shown that he is "settled" in some other union (*i.e.* that some other union can be compelled to maintain him). The master of any workhouse must also receive into the workhouse any child brought there under any order made in pursuance of the Infant Life Protection Act, 1897 ; and such child must be maintained in the workhouse until other arrangements can be made for its maintenance.

In the administration of the large sum of money compulsorily raised each year for these charitable purposes, the guardians have often to anxiously consider vexed problems, and to exercise their discretion with intelligence and foresight. They have to decide in any particular case whether outdoor relief should be given or the workhouse test applied. As regards this question the poor-law is very unequally administered in different unions. On 1st January 1905, 932,267 persons (or 2·7 of the population) were in receipt of poor-relief in England and Wales; of these, 132,689 were adult able-bodied paupers; 273,386 received indoor relief, and 575,613 outdoor relief. Insane in asylums, etc., 83,816. At the same date the ratio of indoor paupers in England and Wales to 1000 of the population was 8·1, the ratio of outdoor paupers was 17·0. But while in the Metropolis the figures were 16·8 and 11·3, in North Wales they were 4·5 and 27·7 respectively. During the last thirty years the cost of indoor relief has increased from one-third to nearly one-half of the cost of the whole relief given. Again, when outdoor relief has to be given, the guardians must decide whether it shall be given in money or in kind. Relief in kind (*i.e.* gifts of food, clothing, coal, blankets, etc.) is less liable to misapplication than gifts in cash.

The total cost of the relief of the poor was in 1881 £8,102,106; in 1903-4 it was £13,369,494, a greater expenditure than in any previous year! Of this large sum a portion was most usefully spent in "boarding-out" 8372 children—an excellent method, which 508 out of the 657 Boards of Guardians have now adopted. By far the greater part of the money required is raised by

means of the poor-rate, the collection of which, as we have seen,¹ is the duty of the overseers of each parish, and not of the guardians, who merely make an order that each parish in the union shall contribute a certain sum. For any permanent work or object, such as the erection of a new workhouse, hospital, or asylum, the guardians may borrow money, provided they can obtain the consent of the Local Government Board. The benefit of such outlay will last for many years, and therefore it is fair that the cost should be spread over many years. But, except for such purposes, a Board of Guardians has no power to borrow money; it may not anticipate its income, or borrow on the security of future rates, or pay interest on moneys so borrowed. The present outstanding debt of our poor-law authorities is £11,154,999.

The office of a guardian of the poor in any populous district is no sinecure. The parish valuation lists are made out by the overseers, but they are subject to revision by a committee of the guardians, called the Assessment Committee, who hear and determine objections. An appeal lies from the guardians to the Quarter Sessions. Though the guardians are primarily the poor-law authority, several matters unconnected with poor-relief have been entrusted to their management. It is the duty of the guardians to appoint and pay the Registrars of Births and Deaths, and to see that they are provided with suitable offices. The enforcement of the Vaccination Acts is also entrusted to them. In all places outside the Metropolis the Board of Guardians is the authority whose duty it is to enforce

¹ *Ante*, p. 50.

the Infant Life Protection Act, 1897. As in the case of most other English administrative bodies, much of their work is done through committees.

Central Control

In no other department of local government is the control exercised from headquarters so efficient and complete as in the case of Boards of Guardians. The union is as potters' clay in the hands of the Local Government Board, and can be moulded at its will. The Board may create new unions, alter the constituent parishes of existing unions, and dissolve unions. The only limiting principle to the exercise of these powers is the regard of the Board for the vested interests of particular parishes. The transfer of a parish from one union to another may obviously alter very considerably the proportion of expenses which it may be called on to contribute. Though the pauper is always with us, he is not evenly distributed over the face of the country. By an Act of 1879 the Local Government Board may, with the consent of the guardians, combine unions for any purpose connected with the administration of the poor-law. Should any corrupt or illegal practice take place at an election of guardians of the poor, a petition must be presented in proper time to the Local Government Board; the newly-elected Board of Guardians has no jurisdiction over the matter. No union officer can be appointed, except in the case of menial servants, without the sanction of the Local Government Board. The officers, when appointed, may be removed by the Local Government Board without consulting the guardians;

yet they cannot be dismissed by the guardians without consulting the Local Government Board. The Local Government Board, too, takes a most paternal interest in all proceedings of the guardians. It advises them in all their doubts and difficulties. It arbitrates between different Boards of Guardians or between a Board and its officers.

Whether the poor-laws should be administered uniformly throughout the country, or whether local authorities should be allowed to impress their own individuality on their administration, is a wide question on which I will not venture here. But there is one matter on which central control is most salutary. The Local Government Board subjects the accounts of all Boards of Guardians to a half-yearly audit of a most thorough and searching character. The auditor (who is an officer appointed by the Local Government Board) gives the officers of each parish in the union fourteen days' notice of the day on which he proposes to hold the audit. The rate-books and other accounts must then be made up and balanced forthwith, and deposited seven clear days at least before the day fixed for the audit at some convenient place within each parish, where they can be inspected on any of the seven intervening days between 11 A.M. and 3 P.M. by any person liable to be rated to the relief of the poor in that parish. Due notice must be given forthwith in each parish, and advertised in at least one local newspaper, of the time and place fixed for the audit, and of the place where the parish books are deposited. Any parish officer refusing to allow any ratepayer in the parish to inspect the books will be liable to a fine of 40s. Every ratepayer in any parish

of the union is entitled to be present at the audit, and may raise any objection to any such accounts before the auditor. The auditor can compel the attendance at the audit of every person who holds any book, deed, paper, goods, or chattel, relating to the poor-rate or to the relief of the poor, and also of every person accountable to the union for any money; and can call on any such person to produce all accounts and vouchers, and also to make and sign a declaration with respect to such accounts.

It is the duty of the Local Government Board auditor to disallow every item of expenditure which is in his opinion improper (and therefore illegal), and to "reduce all such payments and charges as are exorbitant." In addition it is his duty to charge against any person who is accounting to him the amount of any deficiency or loss incurred through the negligence or misconduct of such person, and also the amount of any sum for which such person is accountable but which he has not brought into account against himself. For the guardians who are entrusted with the control and distribution of the poor's fund must be taken to know that there are certain specific purposes for which alone this fund may be employed; and if they allow the moneys in their hands to be devoted to any unauthorised purpose, they betray the trust reposed in them. Hence strictly every guardian who voted in favour of the resolution directing the illegal payment is liable to be surcharged. But the usual course is for the auditor only to surcharge those guardians who actually signed the cheque or the order to the treasurer of the union. The persons surcharged must pay the amount to the treasurer within seven days.

Any guardian who is surcharged can require the auditor to state his reasons for the surcharge in writing in the book of account in which he enters the surcharge. He may then (a) appeal from the auditor to the Local Government Board, who will decide whether the auditor acted legally or not in making the surcharge. Or (b) he may admit his error and apply to the Local Government Board to exercise their equitable powers in his behalf and relieve him from making the payment under 11 & 12 Vict. c. 91, s. 4. The amount will generally be remitted, if the mistake was made in good faith. Or (c) he may apply to the High Court for a *certiorari* to bring up the order of the auditor to be quashed. On such an application the Divisional Court as a rule will refuse to interfere with the discretion of the auditor on any matter of detail or on any question of amount, and will only reverse his decision if it is clear that he has gone wrong on some matter of principle.

The important duties of Boards of Guardians in the administration of the Poor Laws are regulated, with great minuteness, by means of a large number of orders issued from time to time by the Poor Law Commissioners, the Poor Law Board and their successors the Local Government Board, under the provisions of the Poor Law Amendment Act, 1834, and subsequent statutes.

CHAPTER VI

THE COUNTY DISTRICT

County Districts—Necessity and Province of Sanitary Legislation
—History of Sanitary Legislation—Its Results—Sanitary
Districts—District Councils: their Constitution, Powers,
Officers, and Finance—Central Control—Port Sanitary
Authorities.

THE whole of England and Wales, outside the Metropolitan area, is now divided into 1809 districts, of which 326 are boroughs, 815 urban districts, 668 rural districts. The boundaries of the rural districts were originally identical, and still in many cases coincide, with the boundaries of the poor-law unions. The urban sanitary districts were carved out of the unions according to the exigencies of population, little or no regard being paid to the boundaries of parishes or any other area of local government. What was left of the area of the union after the urban portions were abstracted was the rural district. This division of the land dates from 1872, and was made originally for sanitary purposes, with the object of bringing every house in the kingdom under the jurisdiction of some sanitary authority, urban or rural.

The boundaries of these sanitary districts have since been rearranged, in order, so far as possible, to bring the whole of every district into the same county. And they are, therefore, now called county districts. They are, in fact, the modern substitute for that ancient division of a county—the *Hundred*, *Wapentake*, or *Rape*—which is now obsolete. Yet the county districts are still very unequal in size and population, as well as very irregular in form. Thus, leaving all boroughs out of consideration, the urban district of Childwall in Lancashire had in 1901 a population of 219, and contained only 37 inhabited houses; while the urban district of Wallasey, in the county of Chester, has a population of over 53,500 inhabitants and a rateable value of £354,056.

History of Sanitary Legislation

Systematic sanitary legislation in England has had but a short history—in fact, it may be said to begin with the Public Health Act of 1848. Sanitary legislation then was urgently needed, owing to the pressure of population and the rapid growth of large towns. But sanitary science was yet in its infancy; its laws have only recently been recognised as laws at all. It is true that in 1847 and 1848, when cholera visited England, an epidemic disease was no longer looked upon as a shower of darts from some angry Apollo. It was known to be the consequence of the neglect of sanitary precautions, and the violation of sanitary laws. Experience, moreover, had taught men that by isolating the sick and carefully disinfecting their clothing, the spread of such a disease could be arrested. Yet they knew very

little of the nature and causes of infectious and contagious diseases. Science has since advanced; it has traced most, if not all, such diseases to a living germ. We now know that at least one-quarter of the diseases which destroy life are absolutely preventible—that, though sporadic cases may occur, infection is the ordinary cause of such diseases, and that infection can be prevented by sufficient precaution. We know too that pure air and water are the essential conditions of health, while polluted air and water are the sure forerunners of zymotic disease—that sewer gas and all other unhealthy surroundings so lower the vitality of the individual that his constitution cannot resist the germs of disease—that the poison of typhoid fever seems capable of almost unlimited diffusion in water—that milk has extraordinary power of conveying the poisons of scarlet fever and diphtheria—and that ground saturated with decaying organic matter is an excellent breeding-place for the germs of typhoid. Thus, while our information is still far from complete, we know enough of the conditions of health and disease to enable us to take action; and that action must necessarily take the form of legislation. In such matters the individual is comparatively helpless. Concerted action alone can deal effectively with questions of public health. And apparently it is only by the strong arm of the law that concerted action can be efficiently sustained. At the same time, legislation alone will not prevent the spread of disease. The co-operation of the public is necessary; and the best way to secure that co-operation is by teaching the public the properties and causes of each preventible disease.

A nuisance injurious to health is indictable at common law. For instance, if a man accumulates filth on his land so as to cause a nuisance to his neighbours, he may be prosecuted criminally. The now obsolete Courts Leet seem to have exercised some control in sanitary matters. The court rolls of Stratford-on-Avon show that in 1552 Shakspeare's father was fined for depositing filth in the public street in violation of the by-laws of the manor, and again in 1558 for not keeping his gutter clean. But the function of common law begins and ends with the punishment of individuals. It knows nothing of prevention or cure. It has no machinery for dealing with those insanitary conditions which the massing of human beings together in cities and towns necessarily creates. Hence the aid of the Legislature had to be invoked.

The first sanitary Act on the statute-book is an Act of 1388, which imposed a penalty of £20 on persons who cast animal filth and refuse into ditches and rivers. In the reign of Henry VIII. the Statute of Sewers was passed, which authorised the issue of Commissions of Sewers at the discretion of the Lord Chancellor and Lord Treasurer. The Act defined the duties of the Commissioners, which included, among other matters, the cleansing of rivers, public streams, and ditches. In the seventeenth century special statutes were passed relating to the plague. As early as the reign of George II. the more populous and wealthy towns began to seek a remedy in their individual cases by applying to Parliament for special legislation; and from that date down to the present time very numerous special Acts have been passed conferring on various populous

places powers of local government, pointed more directly in the earlier instances at the paving, lighting, cleansing, and improving the districts embraced in them, but recognising in all later instances the importance of sanitary regulations, and making provision accordingly.

The Lighting and Watching Act, 1833, was a step towards more general legislation. It provided for lighting and watching in parishes; enabled the rate-payers to appoint inspectors, who might contract for works; and imposed penalties for contaminating water by gas. The Act was permissive. Its provisions might be adopted in any parish by resolution of the vestry duly convened for that purpose; they were so adopted in many parishes.

In 1847 the Towns Improvement Clauses Act, the Towns Police Clauses Act, the Water-works Clauses Act, the Gas-works Clauses Act, with several similar Acts, were passed for the purpose of consolidating and generalising the provisions usually inserted in local Acts for various public purposes. Their object is to supply model clauses, which can be adopted by reference into local Acts. With a few exceptions their provisions have been adopted into all subsequent local legislation. Under these Acts districts were formed, called "Improvement Act districts," governed by "Improvement Commissioners." Of these districts about fifty continued down to 1894.

✓ In 1848 was passed the first Public Health Act—a great and comprehensive measure, which may be called the foundation-stone of our national sanitary legislation. It did not apply to the Metropolis, but was intended mainly for other large towns and populous places. It

created a General Board of Health, the members of which were appointed by the Crown, and were empowered to appoint inspectors to see that the provisions of the Act were carried out. The General Board of Health had also power to create (through the machinery of an Order in Council) Local Boards of Health. In places where the rate of mortality was exceptionally high the Board of Health might act of its own motion; but in ordinary cases it could only act on the petition of the ratepayers. In municipal boroughs the Town Council was constituted the Local Board. In other places the Board was elected by the ratepayers. Certain specified powers were conferred on all Local Boards, and the General Board of Health was authorised to vary local Acts by Provisional Order. In particular, Local Boards were empowered to construct and manage sewers, drains, wells, water and gas works; to deal with deposits of refuse, closets, and slaughter-houses; to regulate offensive trades; to remove nuisances; to protect water-works from pollution; to pave and regulate streets; to regulate dwellings and common lodging-houses; to provide burial and recreation grounds; and to supply public baths with water.

The Local Government Act of 1858 enabled a Local Board to be created by the resolution of the ratepayers of any place having a defined boundary without the intervention of the General Board of Health. That Board was allowed to expire, and its remaining functions were divided between the Home Office and the Privy Council. In 1871 the public health powers of the Home Office and Privy Council were transferred to the newly-created Local Government Board. The Public Health

Act of 1872 divided the country into urban and rural sanitary districts, and constituted the guardians the rural sanitary authority. Up to that date it had been the duty of the guardians to see to the removal of nuisances. The vestries, on the other hand, had been the rural sewer authorities, and as such had had various other sanitary powers conferred upon them. Now the Act of 1872 took away all sanitary functions from the vestry of every rural parish, and transferred them to the guardians. In urban districts the vestries had for some years ceased to have any sanitary powers. Hence from 1872 to 1894 the sanitary authority in every rural district was the Board of Guardians; while in every urban district it was either the Town Council of a borough, the Improvement Commissioners of an Improvement Act district, or a Local Board of Health.

The Public Health Act of 1875 repealed the Act of 1848 and twenty-nine of its amending Acts, and re-enacted them in a condensed and intelligible form. It does not apply to the Metropolis, but it forms the sanitary code of the rest of England. Several Acts amending or extending it have since been passed, but, with few exceptions, the law of general application relating to sanitary matters is to be found in the Act of 1875. Of the amending and extending Acts it is only possible here to mention three:—

- (a) The Notification of Infectious Diseases Act, 1889;
- (b) The Infectious Disease (Prevention) Act, 1890; and
- (c) The Public Health Acts Amendment Act, 1890, of which Part I. extends to all England, Wales, and Ireland, but Parts II., III., IV., and V. only apply in such districts as adopt them.

The first of these Acts supplied a most necessary link in our machinery for the prevention of infection. In 1899 its provisions were extended to every Sanitary Authority. It was of little use to give power to order a house to be disinfected, and infected clothing to be burned, if there were no means of knowing in which houses infection was rife.

Our sanitary legislation has borne good fruit. It has almost stamped out typhus fever, a disease which formerly exacted an annual tribute of some thousand lives. Compulsory vaccination has scotched, though it has not killed, small-pox. The general health of the population has largely improved, and the expectation of life has perceptibly increased. In the year 1881, 16,000 persons died from scarlet fever, and 5000 from small-pox. In 1896, 5476 persons died from scarlet fever, and only 541 from small-pox; and of these 541 deaths, 443 occurred in the registration district of Gloucester in the course of the epidemic which prevailed there. In the year 1847 the death-rate was 24·7 per thousand of the population; for the year 1896 it was 17·1. This lower death-rate implies the survival of over 2,000,000 persons who, according to the previous rate of mortality, would have died. And the gain does not consist merely in the saving of life. These diseases maimed and enfeebled those who ultimately recovered; they inflicted on those who survived as well as on those who succumbed an enormous amount of pain and misery and pecuniary

loss which could have been prevented by efficient hygienic precautions. The loss of vigour and diminished power of work due to unhealthy surroundings may be an unknown quantity, but no one can doubt its magnitude. There is also an intimate connection between overcrowded dwellings and crime. Nothing more need be said to demonstrate the importance of the matters with which sanitary authorities have to deal.

District Councils

The framers of the Local Government Act of 1894 were in a difficulty. They had announced in the Act of 1888 that there were to be "District Councils." But what was to be the district of these District Councils? With the County Councils all was straight sailing: there were the counties waiting for their Councils. And it had been determined that the parish was to be the unit of local government. But something had to come between the parish and the county, which was to be called a district. Each county was to consist of a number of districts, and each district of a number of parishes. There were plenty of districts to choose from—sanitary districts, School Board districts, highway districts, Improvement Act districts, Drainage Board districts, Land Drainage Act districts. But none of these had been mapped out with any regard to the boundaries of either parishes or counties. There were the unions, which were groups of parishes, it was true, but unfortunately they did not fit into the county system at all. Out of the 649 unions, 183 lay in more

than one county. The old hundred, if it had still existed, would have been the very thing; but it was felt to be impossible to revive the hundred. And so our legislators had to take the sanitary districts and rearrange them. They tried, as far as possible, to get the whole of every parish into the same district, and the whole of every rural district into the same county. Then they christened the districts thus rearranged "county districts," and gave to each a District Council.

A county district may be either urban or rural; its size and boundaries still depend mainly on the areas of antecedent unions and sanitary authorities. Whenever the area of any poor-law union lay wholly outside any urban sanitary district, it became in 1894, if all in the same county, a rural county district, governed by a Rural District Council. If part of the area of a poor-law union lay within, and part without an urban sanitary district, that part which lay outside all urban sanitary districts, if all in the same county, became in 1894 a rural county district, governed by a Rural District Council. Where a union lay in more than one county, the portion included in each county, if large enough to have not less than five district councillors, became at once a separate rural district with a separate District Council; if it would have less than five councillors, and no special order was made either by the County Council or the Local Government Board, it merged in the nearest county district of its own county. The area of any former urban sanitary district became in 1894 an urban county district; if a borough, it is governed by the City or Town Council of the borough; if outside a borough, by an Urban District Council. But the districts

which existed in 1894 have since been considerably modified by Orders made by the Local Government Board and by various County Councils under s. 57 of the Local Government Act of 1888, and s. 36 of the Act of 1894. The latter section expressly directs that, so far as possible, the whole of every parish shall be in the same district, and the whole of every rural district in the same county.

The difference between an Urban and a Rural District Council should be carefully observed; as the Legislature has conferred on the former many powers—especially in sanitary matters—which a rural authority does not necessarily possess.¹ But the most important distinction between the two bodies has been already pointed out in the preceding chapter. A Rural District Council is not only the sole sanitary and the chief highway authority in its district, but its members are also necessarily poor-law guardians; they represent each his own parish on the Board of Guardians for the union. Guardians as such are not now elected for any parish in a rural district. Whereas in an urban district all poor-law matters are still administered by the Board of Guardians of the union, which is independent of and elected separately from the Urban District Council, and may consist of entirely different persons. And from this a minor distinction follows:—By the combined effect of the provisions of 5 & 6 Vict. c. 57, s. 14, and Local Government Act, 1894, s. 46, subs. 5, no person can be a councillor for any rural district who is engaged as the paid poor-law officer of any union or parish in England or Wales, wherever situated. But in the case of an

¹ But see *post*, p. 138.

urban district, there is no such disqualification, as an Urban District Council has nothing to do with the administration of the poor-law.

Constitution of a District Council

Every District Council is a body corporate ; its full title is "The Urban (*or* Rural) District Council of ——" (adding the name of the district, or if there is any doubt as to that name, such name as the County Council direct). It may sue and be sued in that name. It has perpetual succession and a common seal. It may hold land for the purposes of its powers and duties without license in mortmain. Any District Council may, with the sanction of the County Council, change the name of its district, and thus its own name.

A district councillor holds office for a term of three years. As a rule, one-third, as nearly as can be, of the members of every Council go out of office by rotation on April 15th in each year, and new members are elected to fill their places ; though in some districts by special order the whole body retires *en bloc* in every third year, instead of one-third portion retiring each year. The number of councillors in any District Council varies with the size and the population of the district ; but there must be at least one member for every constituent parish that has a population of not less than 300. The councillors are unpaid. They are now all elected by the parishes : there are no *ex officio* or nominated members. The electors are the parochial electors of each constituent parish, or of each ward, if the parish be divided into wards for such an election. The voting is by ballot.

Each elector may give one vote and no more for each of any number of candidates not exceeding the number to be elected.

A woman, even a married woman, may be a district councillor. No property qualification now is requisite. No person can be elected a member of an Urban District Council unless he or she is a parochial elector of some parish within the district, or has resided in the district during the whole of the twelve months preceding the election. But a rural district councillor is allowed greater latitude in the choice of his residence. He is only required to be either a parochial elector of some parish within the union, or to have resided in the union during the whole of the twelve months preceding the election; although the union is often a much larger area than the rural district.¹

The election is conducted under rules made by the Local Government Board. Each candidate for election must be nominated in writing. The clerk to the District Council is the returning officer. A candidate will be disqualified if he is an infant or an alien, or has within twelve months been in receipt of parochial relief, or has within five years been convicted or adjudged bankrupt, or is interested in certain contracts with the Council.

¹ The Legislature never intended that a person living outside a district should be a councillor for that district. The anomaly is caused by the way in which the Act is drafted. Section 24 of the Local Government Act, 1894, which deals with rural councillors, should have been made complete in itself; instead of that, it incorporates s. 20, which deals with guardians of the poor. The result is that any one who is qualified to be a guardian for a union is also qualified to be elected a member of every rural District Council comprised in the area of that union.

The paid officer of one District Council may be elected a member of another, but not of the District Council which employs and pays him. Whatever will disqualify a candidate from serving as a guardian will disqualify him also from becoming a rural district councillor.

The councillors elect their own chairman, who, if a man and not personally disqualified by any Act of Parliament, is by virtue of his office a Justice of the Peace for the county in which his district is situate. If he has not done so already, he must take the oaths usually taken by a Justice of the Peace before he acts in that capacity. But, if re-elected chairman, he need not take the oaths again.¹

If any district councillor is absent from all meetings of the Council for more than six consecutive months, except through illness or for some other good cause approved by the Council, he vacates his seat. And any rural district councillor, who is also a guardian, will apparently vacate his seat on the District Council as well as on the Board of Guardians, if he has without good cause been absent for more than six months from all meetings of the Board, however regularly he may have attended the meetings of the District Council.

Powers of a District Council

On the new body thus constituted, the Legislature has bestowed very wide and extensive powers. And in order that it may discharge its various duties, every District Council is authorised to provide itself with suit-

¹ 59 & 60 Vict. c. 22.

able offices, and to appoint and pay a Clerk, a Surveyor, a Treasurer, and other officers.

1. *Sanitary Powers*.—In the first place, it conferred on every Urban District Council all the powers formerly possessed by a Local Board of Health, with some additions. The sewers¹ of every district vest in the District Council. That body may purchase and construct new sewers. It may provide a map of its sewer system. It must keep its sewers so cleansed and ventilated as not to be a nuisance. It has power to make the owner of a house drain into its sewers, if the house be within 100 feet of the sewer and has no efficient drainage. No new house may be built in the district without being properly drained to the satisfaction of the surveyor. Houses more than 100 feet from the sewer may drain into cesspools. There are special powers to enable District Councils to start and maintain works for disinfecting sewage, or otherwise disposing of it, so as not to create a nuisance. By leave of the Local Government Board, adjoining urban districts may unite and work together in sewage schemes. District Councils may either undertake themselves, or contract for, the scavenging and cleaning of the houses and streets in their district. If in any house there has been infectious disease, or if any dwelling is in a filthy condition, the District Council may, on the certificate of their medical officer of health, require it to be whitewashed and other-

¹ Note the distinction between a "sewer" and a "drain." Speaking generally, any pipe or conduit used for draining one building only, or one block of buildings belonging to the same owner, is *prima facie* a drain, and therefore private property; every other channel used for carrying off sewage matter is *prima facie* a sewer, and the property of the District Council.

wise purified. Among pleasures expressly forbidden to dwellers in urban districts is the "keeping of any swine or pig-stye in any dwelling-house." The provisions of the Act may be summed up by saying that it is made the duty of every householder to keep his house and premises wholesome and clean, while it is the duty of the Council to see that he does so.

Where a district is not already supplied with water by some water company with statutory powers, the District Council may undertake the water-supply. It may also purchase or lease the works of existing water companies. It may either supply water by measure, charging according to quantity, or may recoup itself by a water-rate. If the Surveyor reports that any house has not a proper water-supply, the District Council may compel the householder to take a supply from them. In connection with water-supply the District Council is bound also to supply fire-plugs. It has also power, concurrently with the County Council, to enforce the provisions of the Rivers Pollution Prevention Act. Moreover, the District Council itself is now forbidden to pollute any natural stream with sewage.

Every District Council has ample powers for the regulation of cellar-dwellings and common lodging-houses, and the Local Government Board may, under certain conditions, empower a District Council to make by-laws regulating any houses let in lodgings although not common lodging-houses. It is the body entrusted with the execution of the provisions of the Acts relating to the Housing of the Working Classes. The jurisdiction of the Council to prevent and abate nuisances is extensive. It further has power to prevent offensive

or noxious trades, such as soap-boiling or tallow-melting, from being established without its consent, and to regulate them when allowed.

The powers of sanitary authorities for dealing with infectious diseases have not been sufficiently used. Any person who, while suffering from an infectious disease, wilfully exposes himself in the streets or in any other public place, or who gets into a public conveyance without warning the driver, is liable to a penalty not exceeding £5; but proceedings are seldom taken to enforce this provision. The District Council may provide mortuaries; in certain circumstances it may obtain an order from a Justice of the Peace that the body of a person who has died of an infectious disease be removed to the mortuary. It is highly undesirable for the body of a person who dies of an infectious disease to be kept in a dwelling-house more than a few hours. As it is, the blinds are pulled down, the windows closed, and all the surroundings conduce to a spread of the disease. The District Council may order infected clothing to be burned, making compensation to the owners. It may also order a house or conveyance to be disinfected. It may provide sufficient means of disinfection, *e.g.*, a steam disinfecting apparatus. These powers should be freely used; especially as systematic provision has now been made for the notification of infectious disease to the local authority.

The District Council has power to construct and maintain hospitals, and two or more local authorities may have a joint hospital. There is also power to recover expenses from patients who are not paupers. Some hospitals provide private rooms for patients who

are willing to pay for such accommodation with attendance and nursing. Every inducement should be held out to induce persons of the better classes to avail themselves of hospital accommodation when suffering from infectious disease ; for a well-to-do man is just as infectious as a poor man.

In rural places sanitary problems are for the most part less pressing than in thickly-populated towns ; consequently the normal powers of the rural authority are much less extensive than those of its urban kinsmen. Speaking broadly, a Rural District Council has much the same powers as an Urban District Council in respect of sewerage and drainage, and the inspection and abatement of nuisances. It has larger powers as regards water-supply. It is bound to see that every house in its district is properly supplied with water. It has not the powers of an urban authority in respect of lighting, highways, streets, public baths, or recreation grounds. The Local Government Board may, however, confer on a Rural District Council all or any of the powers of an urban authority upon the application of a Rural District Council or of the ratepayers representing one-tenth in value of the rateable property of the district.

In order to efficiently perform all these functions, every District Council, whether rural or urban, appoints two sanitary officers, namely, the Medical Officer of Health and the Inspector of Nuisances.

The Medical Officer of Health, who must be a qualified medical practitioner, is the sanitary adviser of the Council. His duty is to attend their meetings when required, to advise them as to their sanitary by-

laws, to keep them informed as to the health of their district, and to bring to their attention anything defective in their arrangements, or any threatenings of an approaching epidemic. He supervises the proceedings of the Inspector or Inspectors of Nuisances; and he may also himself exercise the powers of an Inspector of Nuisances. It is further his duty to make an annual report on the health and sanitary conditions of his district to the Local Government Board, and to report specially in the case of any epidemic outbreak. If his reports are properly made, one-half of his salary will be repaid to the District Council by the County Council out of their Exchequer Contribution Account.

The Inspector of Nuisances is appointed and paid by the District Council. It is his duty to search out and report upon all nuisances in the district prejudicial to health, and, under instructions, to take proceedings for their abatement. He also reports to the Medical Officer of Health. It is part of his duty to procure samples of food for analysis by the public analyst. Private individuals, on payment of a small fee, are entitled to have any drug or article of food analysed in like manner. Both the Medical Officer and the Inspector of Nuisances have power to inspect, condemn, and seize any meat, fish, milk, vegetables, fruit, bread, or other food, exposed or prepared for sale, which appears to him to be diseased or unsound or unwholesome or unfit for the food of man.

The Public Health Acts Amendment Act, 1890, is divided into five parts. Part I. extends to all England, Wales, and Ireland, exclusive of the administrative county of London. Parts II., III., IV., and V. may be adopted by any Urban District Council under the

provisions of the Act; but a Rural District Council may only adopt Part III., and that so far only as it is declared by the Act to be applicable to such an authority. Any District Council may adopt the Infectious Disease (Prevention) Act, 1890.

2. *Highway Powers.*—Next, the Legislature conferred on the District Councils large powers over highways. The main roads and county bridges are vested in the County Council, except such as an Urban District Council may elect to retain under its own control. But over all other highways the District Council, whether urban or rural, is supreme. It has all the powers, duties, and liabilities of a surveyor of highways appointed by the vestry under the Highway Act, 1835, and of the vestry itself under that Act or any Act amending the same. The Rural District Council of any district in which there formerly existed a Highway Board under the Highway Acts, 1862 and 1864, has also the powers, duties, and liabilities of such a Board. The reader will find some information as to what these powers, duties, and liabilities are in chap. viii. All Highway Boards have now ceased to exist. It is the duty of every District Council to protect all public rights of way, and to prevent as far as possible the stopping or obstruction of any such right of way, whether within its district or in an adjoining district in the same county, where the stoppage or obstruction thereof would, in its opinion, be prejudicial to the interests of its district. It is also the duty of every District Council to prevent any unlawful encroachment on any roadside waste within its district.¹

¹ See *post*, pp. 184-187.

Every Urban District Council has the management of all streets and highways within its district. It is *ex officio* the surveyor of highways, and may exercise any powers which a vestry could formerly exercise. The Urban District Council owns the soil of every street repairable by it, so far as is necessary for the use of the street by the public, or for any other of the purposes of the Public Health Acts. It may make new roads and regulate the width and paving of new streets, and make regulations to which all new buildings or houses in the district must conform. It may also indulge in civic luxuries. It may name or rename and renumber streets; it may put up statues and clocks in public places; it may provide boats, baths and washhouses, public walks and recreation grounds, plant trees in the roads, and establish markets, charging stallage rents to the traders who use them.

If there be no gas company in the place, it may contract for, or itself undertake, the supply of gas both for streets and private houses. It may also buy out existing gas companies. It may make rules for the prevention of fires and the regulation of hackney carriages. It may establish cemeteries, and make by-laws for their management.

3. *Allotments and Commons.*—Any District Council may acquire land for allotments. It may also, with the consent of the County Council for the county within which any common land is situate, aid persons in maintaining rights of common where, in the opinion of the District Council, the extinction of such rights would be prejudicial to the inhabitants of the district. It may also, with the like consent, exercise in relation to any common within its district all such powers as may, under s. 8 of the Commons Act, 1876, be exercised by

an urban sanitary authority in relation to any common referred to in that section. Notice must be served on the District Council of any application to the Board of Agriculture in relation to any common within its district, so that it may oppose the application if it thinks fit.

4. *By-Laws*.—Every District Council has moreover power to make by-laws for the regulation of the district under its control. A District Council is expressly empowered to make by-laws for the purpose of carrying out the provisions of the Public Health Acts. Such by-laws may impose a penalty not exceeding £5 for each offence. In the case of continuing offences there is power to impose further penalties not exceeding 40s. a day. All by-laws must be made under the seal of the Council, and must be advertised and published in the prescribed manner. They must also, before coming into force, be submitted to the Local Government Board for its approval, when they may be either confirmed, amended, or disallowed. If confirmed, they bind all persons who come within the district.

5. *Miscellaneous Powers*.—The Legislature also transferred to the District Council all the powers, duties, and liabilities of justices out of session in relation to the licensing of gang masters, the grant of pawnbrokers' certificates, the licensing of dealers in game, the grant of licenses for passage brokers and emigrant runners, the abolition of fairs and alteration of days for holding fairs, the administration and enforcement of the Acts relating to petroleum and infant life protection; and also the powers, duties, and liabilities of Quarter Sessions in relation to the licensing of knackers' yards within a county district. A District Council is also the authority

under the Factory and Workshop Act, 1901, whose duty it is to supervise retail bakehouses. The Council of any district abutting on a canal has also duties to perform with regard to the registration and inspection of canal boats under the Canal Boats Acts, 1877 and 1884. An Urban District Council may adopt the Museums and Gymnasiums Act, 1891, and also the Public Libraries Acts, 1892 to 1901. It may apply for and obtain from the Local Government Board all or any of the special powers, duties, and liabilities of a Parish Council. A Rural District Council may enter into a contract with the Postmaster-General indemnifying him against any loss occasioned by his providing extra postal facilities for the district.¹ A District Council may become a local authority for the purposes of the Small Dwellings Acquisition Act, 1899, and as such may make advances to residents in houses not exceeding £400 in value, for the purchase of such houses, and may borrow money for the purpose. An Urban District Council is a "Local Authority" under the Shop Hours Act, 1904, and may be required to act as a Distress Committee under the Unemployed Workmen Act, 1905. In an urban district where the population exceeds 20,000 the District Council is the Local Education Authority for the district for the purposes of elementary education under the Education Act, 1902.

Finance

All these miscellaneous functions involve, of course, very considerable expenditure. This expenditure is of

¹ 54 & 55 Vict. c. 46, s. 8.

two kinds—expenditure which benefits the whole district, and expenditure which benefits particular inhabitants only. To meet expenditure of the latter class two different methods are provided :—

1. Certain expenses—as, for instance, the expenses of putting house drains in order, or connecting them with the sewers, or paving a private street,—are directed to be borne by the owners or householders themselves. If the Council does the work, it may recover the money expended from the householder.

2. Where, though a few only are benefited, the outlay is heavy, the Council for the most part has a discretion to declare the expenditure to be private improvement expenses. In such case the repayment by the householder may be spread over a series of years not exceeding thirty, and the money may be collected by means of what is called a private improvement rate, leviable on the particular persons benefited.

3. Expenditure which benefits the inhabitants generally is met out of the general district fund, or as it is called in the case of a Rural District Council, the common fund.

Into the general district fund is collected the general income from all sources of an Urban District Council. The sources of its income are very various : Treasury subventions (now paid through the County Council), fines imposed and penalties exacted for breaches of by-laws, rents of houses and land, payments for water and gas, harbour-dues, bridge-tolls, and last, but not least, the general district rate. The general district rate must be made by the Urban District Council under its common seal. It may be made from time to time as

occasion requires, either prospectively, in order to raise money for the payment of future charges and expenses, or retrospectively, in order to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate. The district rate is assessable on all property assessable to the poor rate, and is to be assessed on the full net annual value of such property, except in the case of agricultural and railway land within urban limits, which is only to be assessed on *one-fourth* of its net annual value. The poor-law valuation is usually taken as the basis. Occupiers, not owners, are the persons generally rated; but the Council may, if it chooses, rate the owner instead of the occupier, where the annual value of the premises does not exceed £10, and the premises are let out to weekly or monthly tenants. The rate may be inspected by any person interested. Before making a rate it is the duty of the Council to prepare an estimate showing the total amount required, the value of the property assessable, and the amount of the rate per pound.

A rural district is much less compact and connected than an urban district; hence the financial arrangements are necessarily different. A Rural District Council has no power directly to levy its own rates, except in the case of a private improvement rate. It obtains the necessary money by means of precepts addressed to the overseers of the separate parishes comprised in its district. All its expenses, other than private improvement expenses, were divided by the Public Health Act, 1875, into general and special expenses. "General expenses," with one immaterial exception, are the salaries of the

officers of the Council, the expenses of the establishment, the cost of disinfection, and of conveyances provided for infected persons, and all other expenses not determined by the Act or by order of the Local Government Board to be special expenses. "Special expenses" are those which specially benefit a particular area; that is, primarily, the cost of maintaining and cleansing the sewers and of providing a proper water-supply; but the Local Government Board has power to direct that other expenses should be special. "General expenses" must be paid out of a "common fund" to be raised out of the poor-rate of the parishes in the district according to the rateable value of each contributory place. But it is right that each parish should pay separately for its own water-supply or other local work. Hence each parish in the district is a separate "contributory place" and pays all expenses incurred specially for it, by means of a special rate, similar to a poor-rate, but levied only on the particular parish benefited. The basis of assessment is the same as that of the general district rate of an Urban District Council just described; agricultural land, railways, etc., paying on only one-fourth of their net rateable value. Where any work is for the common benefit of two or more parishes in the same district (*e.g.* a joint water-supply) the Rural District Council may apportion the expense between such places as it thinks fit, subject to an appeal to the Local Government Board.

District Councils have large borrowing powers, but loans should not be regarded as a source of income. All works which are not of a permanent nature must be paid for out of current income; but the expenses of works of a permanent character may be defrayed out of

loans. Such loans must be repayable within sixty years, and the sanction of the Local Government Board to the scheme and the amount of the loan must be obtained. The Board also fixes the period over which repayment is to extend. The loans form a charge on the general district rate. In order to secure the lenders, special provisions for the repayment of loans and the due payment of interest are made by the Local Loans Act, 1875. As a result, local authorities can generally obtain money on very easy terms.¹ The last report of the Local Government Board shows that between 1880 and 1903 sanitary rates outside the Metropolis have risen from £7,837,666 to £20,665,350, an increase of 171 per cent; while the total outstanding loans of our extra-Metropolitan District Councils, urban and rural together, is no less than £217,121,397.

Central Control

One other matter must be mentioned—namely, the power entrusted to the Local Government Board of compelling District Councils to do their duty. If a District Council makes default in any matter relating to the sewerage or water-supply of the district, the Board, after due inquiry, may order it to execute the necessary works within a specified time. If the order is not obeyed, it may either be enforced by a writ of mandamus, or the Board may appoint persons to do the work and recover the expenses from the District Council. Again, the accounts of every District Council, not being a Borough Council, are audited annually by an officer of the Local Government Board. And every by-law framed

¹ See the Public Works Loans Act, 1897.

by a District Council must be submitted to and confirmed by a central authority before it comes into force ; such central authority is generally the Local Government Board, but sometimes, as in the case of electric lighting or telegraphy, the Board of Trade.

The Port Sanitary Authority

Besides the ordinary urban and rural authorities, there are sixty Port Sanitary Authorities. The Local Government Board, by Provisional Order, may constitute any local sanitary authority whose district forms part of or abuts on any port, or any conservators or commissioners having jurisdiction over such port, the sanitary authority for the port. Where there are two or more riparian authorities having jurisdiction within any port, the Local Government Board may, if it thinks fit, combine them by Provisional Order, and constitute them the sanitary authority. In such case the Provisional Order must either prescribe the mode of their joint action or must provide for the formation of a joint board. The Port Sanitary Authority has jurisdiction over all waters within the limits of the port and such portions of the surrounding land as are specified by the Provisional Order which creates the port authority.

The constituting order may assign to the Port Sanitary Authority all or any of the rights, powers, and duties possessed by local authorities under the Public Health Act, 1875. It must further direct the mode in which the expenses of the Port Authority are to be paid.

CHAPTER VII

THE EDUCATION AUTHORITY

National Education—Elementary Schools—Religious Instruction, “Conscience Clause,” “Cowper-Temple Clause”—School Boards and their Work—Voluntary Schools—Education Act, 1902—Higher Education—Elementary Education—Aid Grant—Education (London) Act, 1903—Education Bill of 1906.

IMPORTANT changes have been introduced by recent legislation which affect both the constitution and the powers and duties of Education Authorities. For the purposes of elementary education England and Wales was formerly parcelled out into school districts by Mr. Forster’s Elementary Education Act, 1870, which may be regarded as the charter of national education. Prior to 1870 primary education was recognised as an object of public utility. Building grants and annual grants out of public moneys were made in favour of voluntary schools which had reached a certain standard of efficiency. But Mr. Forster’s Act first recognised and gave effect to the principle that it is the duty of the State to see that every child receives the primary elements of an education.

A later Act, the Elementary Education Act, 1876, went a step farther, and compelled parents to educate their children, or at least to see that they were educated.

It also prohibited the employment of the children in any work which would interfere with their education. No child under the age of twelve may now be employed in any factory or workshop.¹ The Coal Mines Regulation Acts, 1887 and 1900, and the Prevention of Cruelty to Children Act, 1904, place restrictions upon the employment of children under the ages of thirteen, fourteen, and sixteen respectively. The minimum age at which a child may now be excused wholly or partially from attendance at school is twelve,² with one exception, viz. in the case of children employed in agriculture, when the minimum age may be eleven. No child between twelve and fourteen can be excused from school attendance without a certificate of proficiency or of due attendance at school. Under an Act of 1893 a blind or deaf child may be compelled to attend school until he or she has attained the age of sixteen, and a similar provision was made in 1899 in respect of defective and epileptic children.

To give effect to these and subsequent Acts two distinct steps have to be taken :—

(i.) Efficient schools must be provided, large enough to accommodate the children who need education.

(ii.) The children who need education must be made to attend those schools.

In other words, “a school place for every child, and every child in its place.”

Prior to 1902 the first step was generally attained by the creation of a School Board wherever the school

¹ Factory and Workshop Act, 1901, s. 62.

² Elementary Education (School Attendance) Act, 1893, Amendment Act, 1899, s. 1.

accommodation was inadequate; the second, by the School Board or by the formation of a School-Attendance Committee in districts which had no School Board. The local education authority in every school district was either a School Board or a School-Attendance Committee. The School Board both provided education and made the children attend to receive it. The School-Attendance Committee merely saw that the children received the education which was provided for them. The Education Act, 1902, abolished these authorities, and in most instances substituted another area for that of the old school district.

An elementary school is a school, or department of a school, at which elementary education is the principal part of the education there given, and at which the ordinary payments from each scholar do not exceed ninepence a week.¹ A public elementary school is an elementary school which is open to inspection by His Majesty's Inspectors of Schools, which is worked under the "Conscience Clause," and which conforms in other respects to the requirements of the Board of Education.

When the Elementary Education Act, 1870, first came into operation, the chief element of controversy was the question of religious teaching in rate-supported schools. That controversy was then lulled to sleep by a compromise. The Act of 1870 provided that no religious catechism or religious formulary, distinctive of any particular denomination, should be taught in a school provided by a School Board (s. 14). This provision is known as the "Cowper-Temple Clause." Subject to this School Boards might direct religious instruction to

¹ Elementary Education Act, 1870, s. 3.

be given in their schools, and of such a kind as they thought best. It was, however, provided by s. 7 of the same Act that any scholar might be withdrawn by his parent from such religious instruction without forfeiting any of the other benefits of the school, and the time for such instruction was to be either at the beginning or at the end of any meeting of the school. The same section further provided that with regard to all public elementary schools, whether provided by a School Board or not, it should not be required, as a condition of any child being admitted into or continuing in the school, that he should attend or abstain from attending any Sunday School or any place of religious worship, or that he should attend any religious observance or any instruction in religious subjects in the school or elsewhere, or that he should attend the school on any day exclusively set apart for religious observance by the religious body to which his parent belonged. This provision is known as the "Conscience Clause." The religious question was revived in 1892, 1902, and 1906, and on each occasion it did much mischief.

There are many questions affecting elementary education with which the present volume is in no wise concerned.¹ We have only to consider here the machinery by which the Education Acts are worked, not the nature of the products which that machinery turns out.

Schools for pauper children, other than workhouse schools, may be provided by combinations of unions or parishes not in one union. Such combinations are formed by order of the Local Government Board. Industrial

¹ They are admirably dealt with in another volume of this series, *The State in Relation to Education*, by Sir Henry Craik, 1896.

Schools are under the control of the Home Secretary, as children are sent to these schools by the order of a magistrate.

The Board of Education was established in 1900 in the place of a Committee of the Privy Council, known as the Education Department, and first formed in 1839. The Board is charged with the superintendence of matters relating to Education in England and Wales.

In order that the Elementary Education Acts might be efficiently carried out, statutory duties were imposed upon three classes of persons, namely, parents, the Board of education, and local authorities.

Firstly, It was declared to be the duty of the parent of every child to cause such child to receive efficient elementary instruction. The term "parent" is defined so as to include every person standing towards a child *in loco parentis*, and has been held to apply to a maiden aunt. What is meant by "efficient elementary education" is defined each year by a Code issued by the Board of Education. At first it meant writing, reading, and arithmetic. It now includes much more. The Code has practically the force and effect of an Act of Parliament.

Secondly, It was made the duty of the Board of Education to see that in every school district there was an adequate supply of public school accommodation to meet the wants of the children.

Thirdly, If in the opinion of the Board of Education there was not a sufficient supply of public school accommodation in any school district, it was the duty of the local authority to supply it. In order to enforce these various duties the whole of the country was mapped out

into school districts. The whole of the metropolis was one district. Every borough outside the metropolis was made a school district. Every parish not included in a borough or in the metropolis was, as a rule, also a school district. In every school district there had to be either a School Board or a School-Attendance Committee, and this remained the law till 1902.

School Boards and their Work

On the 31st December 1897 there were in England and Wales 2502 School Boards representing areas which contained a population of 19,918,110. The number of children in average daily attendance in Board schools in England and Wales on the 31st August 1897 was 2,023,850. On the 31st August 1902 the number of School Boards had increased to 2564 for areas embracing a population of 22,952,376—more than two-thirds of the entire population. There were also 787 School-Attendance Committees for areas embracing a population of 9,575,467. The average attendance of children at the Board schools then amounted to 2,369,980 pupils.

School Boards were empowered to make by-laws for the purpose of enforcing the attendance of children at school, and to appoint officers to aid in carrying the by-laws into effect. Another mode of compelling the attendance of children is by school-attendance orders made by Justices of the Peace on the application of the Local Education Authority. It was the duty of the School Board to provide such school accommodation as the Board of Education might require them to provide. If they made default the Board might after due notice

appoint a Committee to act in their place until the requirements of the Board had been complied with.

For the purposes of building or enlarging schools extensive borrowing powers were conferred on School Boards. No parliamentary grants in aid of buildings are made now. The amount of the outstanding loans effected by the London School Board on the 25th March 1903 was £11,052,799; of other School Boards £22,763,747, making a total of £33,816,546. Of this sum £2,320,774 had been borrowed by School Boards during the preceding twelve months.

All other moneys received by a School Board were paid into the school fund, and out of that fund all ordinary expenses of the School Board were defrayed. That fund was supplied from four sources :

1. Fees paid by the children.
2. The fee-grant made by Parliament in lieu of fees.
3. Annual grants made by the Board of Education.
4. The school rate.

1. Formerly about one-quarter of the income of every Board school was derived from fees—the pence paid by the children. The amount of these fees was fixed by the School Board under the sanction of the then Education Department. The School Board had power under certain conditions to remit a child's fees, and the Guardians had a further power to pay the fees where the parents could not afford to pay them. Many Boards of Guardians made free use of this power. Thus, in 1881 the amount raised by rates was £1,500,000; while the amount derived from fees was £370,000, of which £33,000 was paid by the Guardians for children whose parents could not pay the fees.

Of course it was right that parents who could afford to do so should pay for the education of their children. But it was more important that the children should be educated. The difficulty in practice was to know which parents could and which could not pay the fees. If a child in whose favour no order had been made for remission came to school one Monday morning without the school-pence, what was the teacher to do? The child's story always was that "Father was out of work, and could not find the money." And this was generally true, though sometimes false. The law said that in such a case it was the duty of the teacher to exclude the child from the school, to turn him into the street, where all the good he had already received at the school would be speedily dissipated, and then to prosecute the parent because the child had not attended school! It was found in practice that in many schools the money received from fees did not compensate for worry, expense, and loss of time incurred in obtaining them; while in schools attended by a better class of children the teacher was constantly occupied in making book-keeping entries when he should have been teaching the children. It was humiliating to the honest parents to have to beg for a remission of the fees while less honest parents obtained such remission by deception. It was therefore strongly urged that, as education now was compulsory, it should also be made "free." This was warmly opposed as "another step towards Socialism," unfairly relieving the parent of his responsibilities at the cost of his neighbours. And on whom, it was asked, was the burden to fall if it were taken off the shoulders of the parent? The ratepayer

was already overburdened. The amount which the Imperial Exchequer already contributed in relief of the rates was enormous. But it was thought that the long-suffering taxpayer could be a little further squeezed. After all, education was a matter of national concern.

2. The Legislature, as usual, did not quite adopt the view of either side. It avoided all compulsion; but it attained the end in view by a permissive measure, the Elementary Education Act, 1891.¹ In the first place, it increased the amount of free school accommodation. Every parent has the right to claim free education for his child; and as a matter of fact, a free place is now always found for every child whose parent applies for one. Parliament also offered to every school a "fee-grant," as it is called, of ten shillings for each child in average attendance on condition that the school would reduce the fees it charged by a corresponding amount. No school is bound to accept this fee-grant; most schools do; in fact, nearly every school does. But if any school accepts the fee-grant, it must make a corresponding reduction in its fees. The practical result is this, that in lower elementary schools generally the children who are compelled to attend school pay no fees; in higher elementary schools they pay a reduced fee, merely 1d. or 2d. a week as a rule for children under the age of 15. The Board of Education has, however, power to approve a higher scale of fees if it is satisfied that sufficient free accommodation is already provided in the school district, and that it will be for the educational benefit of the district, or any part of it, to allow an increase of fees in a particular school. But even in that

¹ 54 & 55 Vict. c. 56.

case the ordinary fee must not exceed sixpence a week per child. The result is that the amount received by schools from school-fees is very greatly reduced.

3. The annual grant was the amount allowed by the Board of Education to any school which fulfilled its requirements. The conditions which must be fulfilled to enable any school to obtain a grant are set forth in the Code which is issued annually by the Board of Education. The amount granted varies with the efficiency of the particular school inspected. There is now no limit imposed by statute on the amount which any school can earn. Formerly there was in most cases a *maximum* limit of seventeen shillings and sixpence for every child in average attendance at the school. But that limit was abolished in 1897;¹ and now the amount which a school can earn does not depend in any way upon its income from other sources. The total amount of the grant made by the Education Department to Board schools in the financial year 1885-86 was £1,094,607; for 1890-91, £1,445,085; for 1895-96, £2,999,956; and for 1902-3, £4,126,044.

4. The amount received from all the above sources was never sufficient to meet the expenditure of any School Board. The deficiency had, therefore, to be provided by a rate. The School Board delivered to the rating authority a precept for the amount required. In boroughs the rate was levied as part of the borough rate, and in parishes outside boroughs as part of the poor-rate. In the year 1881 the amount raised by rates was £1,500,000, in 1896 it was £4,571,260, and in 1902-3 £6,744,173, so that about one-half of the ex-

¹ 60 Vict. c. 5, s. 2; and see 60 Vict. c. 16.

penditure of the School Boards was contributed by the rates.

Voluntary Schools

A public elementary day school which was not provided by a School Board was called by the Legislature a "voluntary school." In 1897 it was found necessary to invoke the aid of the State in order to increase the efficiency of voluntary schools, and to help especially such as were "necessitous." For this purpose a grant was made annually by Parliament in aid of voluntary schools, which was generally known as the "aid grant." It could not exceed in the aggregate five shillings per scholar for the whole number of scholars in those schools. On the 31st August 1902 the average daily attendance of children at voluntary schools was 2,520,257. In the following year the Education Act, 1902, came into force, by which the Local Education Authority became responsible for elementary education in voluntary schools.

The Education Act, 1902

For the purposes of this Act the Council of every County and of every County Borough became the Local Education Authority, subject, however, to the provision that the Council of a borough with a population of over 10,000, and of an urban district with a population of over 20,000, became the Local Education Authority for the purposes of elementary education for such borough or urban district.

Higher Education

As regards higher education, it became the duty of the Local Education Authority to supply or aid the

supply of such education to meet the needs of their area, and to promote the general co-ordination of all forms of education. For this purpose they were enabled to apply moneys provided under the Local Taxation (Customs and Excise) Act, 1890, and moneys raised by rate. The amount of the rate may not, however, exceed twopence in the £ unless with the consent of the Local Government Board. The Councils of non-county boroughs and of urban districts are also entitled to supply or aid the supply of education other than elementary, and for that purpose to spend an amount not exceeding that which would be produced by a rate of one penny in the £. Section 4 of the Act contains provisions dealing with religious instruction in connection with higher education, which are similar to those of the "Cowper-Temple Clause" and the "Conscience Clause" already referred to, p. 151. A Council in exercising its powers is to have regard to any existing supply of efficient schools and colleges, and to any steps already taken for the purposes of higher education under the Technical Instruction Acts, 1889 and 1891, which are now repealed. As a result of these provisions higher education has, since 1902, received greater attention and more support from local authorities than in former years.

Elementary Education

This Act abolished School Boards and School-Attendance Committees, and transferred their powers and duties to the newly constituted Local Education Authorities. These authorities, therefore, took over the Board schools; they are also responsible for and have the control of secular instruction in public

elementary schools not provided by them. In this Act public elementary schools are divided into two classes : "provided," or schools provided by the Local Education Authority, including Board schools transferred to them ; and "non-provided," or schools not so provided, formerly known as voluntary schools. It is the duty of the Local Education Authority to maintain and keep efficient all necessary public elementary schools. All "provided" public elementary schools, where the Local Education Authority is the Council of a county, have a body of managers. The County Council appoints two-thirds of these managers ; the others are appointed by a "minor local authority," such as a borough, urban, or parish council, or parish meeting of the area served by the school, as the case may be. Where the Local Education Authority is the Council of a borough or urban district, it may, if it thinks fit, appoint a body of managers for provided schools. Every "non-provided" school has a body of managers, consisting usually of four foundation managers to represent the interests of those who established or managed the school before the Act was passed, and two to represent the Local Education Authority. The foundation managers are appointed under the provisions of the trust deed of the school, or of an order of the Board of Education. The other managers are appointed, when the Local Education Authority is a County Council, one by that authority, and one by a "minor local authority" of the district where the school is situated ; where the Local Education Authority is a Borough or Urban District Council, both managers are appointed by that authority. The managers of each "non-provided" school are entrusted

with the management of the school as a public elementary school on behalf of the Local Education Authority. The managers provide the school-house for use free of charge, and they are required to keep it in good repair out of funds to be provided by them. They appoint and dismiss the teachers, but subject, on educational grounds, to the consent of the Local Educational Authority. Religious instruction in these schools is regulated by the trust deed, and is under the control of the managers. A Local Education Authority may group provided schools under one body of managers. With the consent of the managers "non-provided" schools may also be grouped for the purposes of management.

In lieu of the grants in respect of voluntary schools under the Voluntary Schools Act, 1897, and the annual grants under the Elementary Education Act, 1870 and 1897, an annual grant is now made out of moneys provided by Parliament, which includes (*a*) a sum equal to four shillings per scholar, and (*b*) "an additional sum of three-halfpence for every complete twopence per scholar, by which the amount which would be produced by a penny rate on the area of the Authority falls short of ten shillings a scholar," with modifications in cases where the amount payable by the Local Education Authority out of sources other than parliamentary grants is less than the amount which would be produced by a rate of threepence in the £. The Local Education Authority may, if they think fit, abolish school fees in "non-provided" schools. Endowments and the discretion of trustees in respect of them are not affected by this Act; but, where it is necessary to divide the income from an

endowment in order that the Local Education Authority may receive the portion to which they are entitled, and a difference arises, the Board of Education may settle the amount. If the Local Education Authority fail to fulfil any of their duties under the Elementary Education Acts, or to provide the necessary public school accommodation, the Board of Education may after a public inquiry make and enforce an order requiring them to fulfil their duty.

Education Committee

It is the duty of a Local Education Authority, unless its powers are limited to higher education only, to establish an Education Committee. This Committee must be constituted in accordance with a scheme made by the Authority, and approved by the Board of Education. Every such scheme must provide for the appointment by the Local Education Authority of at least a majority of the Committee, for the appointment on the nomination of other bodies of persons of experience in education, and of persons acquainted with the needs of the schools in the area, and for the inclusion of women as well as men among its members. All matters relating to the exercise by the Local Education Authority of their powers as to education, except the power of raising a rate or borrowing money, stand referred to the Education Committee so established. The Local Education Authority, before exercising such powers, unless the matter be urgent, are to receive and consider the report of the Education Committee with respect to the matter in question. A Local Education Authority may also delegate to their Education Committee any of

their powers as to education save the raising of a rate or the borrowing of money.

Expenses

The expenses of Local Education Authorities under this Act, not otherwise provided for, are paid by a County Council out of the County fund ; by a Borough Council, out of the borough fund or rate, or, where there is no borough rate levied, out of a rate made in a similar manner ; and by an Urban District Council, out of funds raised by means of the poor-rate. A County Council must charge a portion, not less than one-half or more than three-fourths of expenses incurred in respect of rent or capital expenditure for the provision or improvement of any public elementary school, on the parish or parishes served by the school, and must raise not less than one-half, or more than three-fourths of expenses incurred in respect of loans or rent of Board schools transferred to them, exclusively upon the district in respect of which the liability was incurred. The accounts of Local Education Authorities and of managers are subject to audit by District Auditors. A County Council may borrow for educational purposes as for purposes under the Local Government Act, 1888 ; and a County Borough, Borough or Urban District Council, as for the purposes of the Public Health Act, 1875, but, in the case of a Borough or Urban District Council, on the security of the fund or rate out of which the expenses are payable.

This Act provides that the expression “elementary school” is not to include any school carried on as an evening school under the regulations of the Board of

Education. As a general rule, no child can now be kept at a public elementary school after it has attained the age of sixteen years, but the Board of Education has power to extend the limit if no suitable higher education is available within a reasonable distance of a school.

The Education (London) Act, 1903

The Metropolis was excepted from the operation of the Education Act, 1902, but in the following year its provisions were applied to the Metropolis with certain modifications. The London School Board thereupon ceased to exist, and its powers and duties passed to the London County Council, which is now the Local Education Authority for the administrative County of London. The City is under this Act in the position of a Metropolitan Borough. An Education Committee has been appointed through which the Council acts. Every provided school in a Metropolitan Borough has a body of managers, two-thirds of whom are appointed by the Council of that borough, and the remaining third by the London County Council on the recommendation of its Education Committee. Schools may be grouped for the purposes of management. The Metropolitan Borough Councils must be consulted as to sites for new public elementary schools in their respective boroughs, and no new site can be compulsorily acquired in a Metropolitan Borough without the consent of the Borough Council, unless the Board of Education determine that such concurrence may be dispensed with. A school which, in the opinion of the Board of Education, is not of a local character—such, for instance, as a school for blind, deaf,

epileptic, or defective children—is not within this provision.

In the Metropolis there is no limit placed upon the amount of the rate which may be levied for the purposes of higher education. The Board of Education may make schemes relating to endowments with due regard to the interests of the locality for which the benefits of the endowment were intended.

The Education Bill of 1906

On 1st January 1906 there were 5796 provided schools in England and 1004 in Wales. Of these there were only 7 in England and 158 in Wales in which, so far as the local authorities were aware, there was neither religious instruction nor religious observance. On 9th April 1906 Mr. Birrell brought into the House of Commons his Education Bill, the three main principles of which were :—

1. That after 1st January 1908 no school should be recognised as a “public elementary school” unless it had been provided or taken over by the Local Education Authority, and thus placed under public control.

2. That no religious tests should be imposed on teachers.

3. That no denominational religious instruction should be given at the public expense.

The Bill empowered the Local Education Authority, if it thought fit, to purchase or otherwise obtain the use of any existing voluntary school and carry it on as if it were a school provided by the Authority. If the trustees or owners of such a school made it a condition of such purchase or hire that special religious instruction

of a kind not permitted by the "Cowper-Temple Clause" should be given in such school after its transfer to the Authority, clause 3 of the Bill permitted the Authority to allow such special religious instruction to be given in such school on not more than two mornings a week to the children whose parents desired it, but forbade the Authority to pay for such instruction out of the rates. Clause 4 provided, that in an urban area where the population exceeded 5000, the Authority might on certain conditions give extended facilities for special religious instruction in any voluntary school which had been transferred to it free of rent or other payment. Save in cases coming within clauses 3 and 4, no religious instruction was to be given in any school maintained by the rates and controlled by the Authority except that undenominational form of our common Christianity permitted by the "Cowper-Temple Clause." In no case was any other form of religious instruction to be paid for out of the rates. And in no case was any child to be compelled to attend school during the times allotted to religious instruction.

The Bill was carried through the House of Commons by a large majority. But the House of Lords introduced into it amendments which were regarded by the Government as altering the whole fabric of the Bill. On 12th December the House of Commons rejected the Lords' amendments *en bloc* by the enormous majority of 309 (416 to 107). On 19th December however the House of Lords in their turn insisted on all their amendments *en bloc*. So the Bill was withdrawn; and the former law remains in force.

CHAPTER VIII

THE HIGHWAY AUTHORITY

Highways—Repair of Highways—Main-roads—Bridges—Highway Areas and Authorities—Obstruction of a Highway—Roadside Strips.

A HIGHWAY is defined by Blackstone as a public road which all subjects of the realm are entitled to use. If the public has the right to pass on foot only, the way is a public footpath; if the public has a right to ride or lead a horse along the way, it is a bridle-path; if the public has a right to drive cattle along the way, it is a drift-way; if the public has the right to drive in carts or carriages along the way, it is a high-road. In each case, the extent of the right of the public is determined principally by antecedent user.

A highway can, of course, be created by statute, otherwise it can only arise by what is called “a dedication to the public.” If a freeholder makes a new road and invites the public to use it, he is said to expressly dedicate it to the use of the public. But what more frequently happens is that the freeholder tacitly permits the public to walk or drive across his land in a certain defined track for such a length of time that the law

presumes that he must have intended to dedicate the way to the public, although he has never expressly said so. Such an intention will be presumed from his acquiescence in the indiscriminate use of the way by the public for a substantial length of time, such as ten or twelve years. But the presumption may be rebutted by special circumstances—as, for instance, if the freeholder had let the land to a tenant, or is himself only a tenant for life.

When once a public right of way has been thus acquired, it cannot be lost or extinguished by abandonment or non-user; the public retain the right, though they may not have occasion to exercise it. Nor can such a right be released or sold; for there is no body or person (except Parliament) that can grant away the property of the public. At common law the maxim was, "Once a highway, always a highway." But the framers of the Highway Act, 1835, devised a cumbrous method by which a highway can, after many preliminary precautions, be stopped or diverted. The only ground on which a highway can be stopped is that it is unnecessary. The only ground on which a highway can be diverted is that the proposed new way is "nearer or more commodious" than the existing way. The prior consent of both the District Council and the Parish Council is now necessary in both cases; and even when these bodies consent, the Parish Meeting may veto the proposal. If there be no Parish Council in any parish through which the highway passes, the consent of the Parish Meeting must be obtained before it can be either stopped or diverted.

Repair of Highways

At common law it was the duty of the inhabitants of each parish to maintain and repair all highways within it. There was no escape from this liability. No contract would free the parishioners from it. And in spite of all modern changes, if "a highway repairable by the inhabitants at large" be out of repair, the proper course is still to indict the inhabitants of the parish. This general rule was subject to two exceptions which are still preserved—first, a particular landowner might be bound, as one of the conditions on which he held his land (*ratione tenuræ*), to repair the public roads passing through it; and secondly, a particular parishioner or a particular portion of a parish (*e.g.* a township or hamlet included in it) might *ratione tenuræ* be exempt from the general duty. But unless the liability could thus be cast on others, the inhabitants of each parish, prior to 1836, were bound to repair every highway in their parish, whether it had been dedicated to their use a century, or only a week, ago. It was in fact in the power of any landowner by dedicating a way to the public to impose on the parish the burden of repairing and maintaining it, without the leave or consent of his fellow-parishioners, and whether the way was of any real use to them or not. This was felt to be a hardship. Accordingly by s. 23 of the Highway Act of 1835, the law was altered, and the general liability of the inhabitants of a parish restricted. They remained liable to repair any road, drift-way, or bridle-path which had been set out and dedicated to public use by a private person or corporation at any date prior to March 20th

1836 ; but no such liability arose in respect of any new way, unless and until certain formalities were gone through and the way accepted ("taken over," it is called) by the parish. The steps which now are necessary before a way dedicated to the public becomes repairable at the expense of the district are as follows :—

1. Any person who desires to dedicate a way to the public must give three months' notice of his intention to the District Council and to the justices of the division of the county in petty sessions assembled.

2. The District Council must be satisfied that the road is properly made, and that it is useful and not unnecessary.

3. The justices must inspect the road, and satisfy themselves that it is properly made and is of the proper width, and give a certificate to that effect.

4. Their certificate must be enrolled at the next Quarter Sessions, subject to a possible appeal.

5. The public must use the road for twelve months, and during that time the dedicator must himself repair it.

Then at the end of the twelve months it becomes a highway repairable by the District Council.

A District Council may also agree with a landowner, who is proposing to make a road in their district and to dedicate it to the public, that it shall on completion become a highway repairable by the District Council ; and it will then become such a highway without the intervention of any justices.

If a road is dedicated to the public after 20th March 1836, and is not "taken over" in either of these ways, it remains a public highway, but no one is bound to repair

it. No such duty rests on the dedicator, or on the present owner of the soil. The inhabitants of the parish have no duty and no right to repair it; indeed, if they do so against the will of the owner of the soil, they commit a trespass.

But the Act of 1835 was not retrospective. It did not relieve the inhabitants of a parish from the necessity of repairing any existing highway. They still had to repair all highways which were repairable by the inhabitants at large on 20th March 1836. This liability has since been narrowed. If an ancient highway has now become unnecessary for public use, proceedings can be taken—with the consent in a rural district of the Parish Council—to have it declared to be no longer repairable by the parish or at the public expense. But means are provided for reviving the liability of the inhabitants of the parish, should the highway again be needed for public use.

There are now in England and Wales upwards of 120,000 miles of highways repairable at the public expense, of which 27,367 miles are on what are called “main-roads.”

Main-roads

High-roads, or public carriage-ways, are of two kinds: main-roads and ordinary high-roads. Main-roads are the great arteries along which the main traffic of the country flows; they were formerly known as the “king’s highways.” The distinction between such main-roads and by-roads which only serve a small area was recognised from the earliest times; but it only became important in the last century, when

the Legislature began to pass the various Turnpike Acts.

Under these Acts the control of certain roads was vested in trustees, who were empowered to defray their expenses by collecting tolls. In theory nothing could be fairer than this system of direct taxation. Every one who used the road contributed to the expense of maintaining it, and contributed an amount which was roughly in proportion to the use which he made of the road. But in practice the system is both annoying and costly. Mr. Dodson described it as "the most extravagant mode of maintaining roads which the ingenuity of man or fiend could devise."¹ This feeling spread, and no new Turnpike Trusts were created; all the old ones are now at an end: the last turnpike toll has been collected; and the Turnpike Acts have all expired.

Before 1878, when a road ceased to be a turnpike road, it became once more an ordinary high-road. But by an Act of that year, known as the Highways and Locomotives (Amendment) Act² it was provided that all roads disturnpiked after 31st December 1870 should be styled "main-roads." The Act further provided that the county authority (*i.e.* at that date the justices in Quarter Sessions, now the County Council) may declare any important highway (*e.g.* one which is the medium of communication between great towns, or which leads to a railway station) to be a "main-road." On the other hand such authority may apply to the Local Government Board for an order declaring that a main-road or any part of a main-road shall cease to be such, and become

¹ Hansard, vol. cclx. p. 64.

² 41 & 42 Vict. c. 77, ss. 13, 15.

an ordinary highway. Hence no exact definition of a "main-road" can be given: one can only say that most main-roads were formerly turnpike roads, though many former turnpike roads are not now main-roads.

A main-road was formerly repaired by the highway authority of each district; but one-half the cost of such repairs was repaid by the justices of the county, so long as the road was repaired and maintained to the satisfaction of the County Surveyor. Now, however, by s. 11 of the Local Government Act, 1888, every road in a county which is for the time being a main-road, and every bridge carrying such road, if repairable by the highway authority, vests in, and must be maintained and repaired by, the County Council, except such as an Urban District Council elected to retain under its own control. Before any road was taken over by the County Council, it had to be placed in proper repair by the highway authority to the satisfaction of the County Surveyor. The County Council may either itself maintain and repair a main-road, or it may require the District Council in whose district such main-road lies to undertake these duties in consideration of an annual payment to be agreed upon or settled by arbitration. Any main-road which an Urban District Council retains under its control vests in it in the same way as any ordinary high-road; and in that event the County Council pays the Urban District Council an annual contribution, the amount of which must be agreed between them, or determined by the Local Government Board after inquiry. And whenever any part of a main-road is out of repair, and the duty of repairing it rests on a District Council, the County Council may give notice

requiring the road to be placed in proper repair, and, if this is not complied with, may itself do the repairs, and the expense will be a debt due from the District Council to the County Council. The County Council also has power to abate any encroachment, and to remove any obstruction, on a main-road.

Bridges

At common law the inhabitants of a county at large were primarily liable to repair all public bridges in the county. This duty was part of the *trinoda necessitas*. But by usage, prescription, or ancient tenure, the duty of repairing a particular bridge may be cast upon a hundred, parish, township, or individual. And if a wholly unnecessary and superfluous bridge was erected by a private individual, the county was not bound to repair it, even though the public used it. All other bridges were called "county bridges," and the obligation of repairing them lay at common law upon the county, and not on any particular township or parish. This obligation has been repeatedly confirmed by statute. But the County Bridges Act of 1803 imposed one important restriction in the case of bridges erected after 24th June 1803: the county was not to be liable for the repair of any such bridge, unless it was built in a substantial manner under the direction or to the satisfaction of the County Surveyor. Another limitation was introduced by the Highway Act of 1835, which came into operation on 20th March 1836. Till that date the county was liable under the old Statute of Bridges of 1531¹ to

¹ 22 Hen. VIII. c. 5, s. 7.

repair not only the bridge, but also the approaches to it for a distance of 300 feet on either side. And this liability continues in the case of every bridge which was built before 20th March 1836. But as regards all bridges built since that date the burden of maintaining the approaches and the roadway supported by the bridge is thrown by the Act of 1835 on the highway authority of the parish or district and not on the county.

And now, under the Local Government Act of 1888, all county bridges are to be repaired by the County Council; and all business formerly done by Quarter Sessions in respect of bridges and roads repairable with bridges, and all powers vested in the justices of a county in such matters are transferred to the County Council. The County Council may either repair such bridges itself, or it may from time to time make an arrangement with any District Council, or other highway authority, or with the Council of any adjoining county, as to the construction, reconstruction, alteration, or improvement of any bridge within its jurisdiction, or as to freeing it from tolls. A County Council may also purchase or take over, on terms agreed on, existing bridges which are not at present "county bridges," and erect new bridges, and maintain, repair, and improve them. All costs of repairing and maintaining main-roads and county bridges are charged to the general county account. Any bridge which is not a "county bridge" must still be repaired as it was before 1888. The duty of repairing a bridge extends to the repair of all the artificial parts of the structure, and includes rebuilding, if necessary. This was decided in 1810 in the case of the bridge built by Queen Anne across the Thames at Datchet.

Highway Areas and Authorities

So far we have dealt with main-roads and county bridges. As to all other highways a different and a longer and more complicated tale remains to be told. The highway authorities whose duty it was to repair and maintain such highways were formerly of many different kinds, and so were the areas under their control. The principal highway areas, prior to 1894, were three in number—(1) the highway parish; (2) the highway district; and (3) the urban sanitary district. The first two were always rural authorities. There were other areas besides these. The six counties of South Wales had a special highway organisation of their own under Acts of 1844 and 1860; the Isle of Wight had its special constitution; and the Metropolis, of course, was excluded from the operation of the general Acts. There were, too, other places and towns which had special Acts, varying or adding to the general highway powers.

The highway authority in a highway parish was formerly the "Surveyor of Highways"; in a highway district, the District Highway Board; in an urban sanitary district, the Local Board of Health; the Town Council, or a body of Improvement Commissioners. Now the highway authority is for most purposes the District Council, though the County Council, the Parish Council, and even the Parish Meeting, have powers which must not be ignored.

1. The highway parish did not necessarily coincide with the poor-law parish. By custom a particular township or hamlet which was part of a poor-law parish

might for highway purposes be a separate parish. In short, any parish, township, or place which maintained its own highways was a separate highway parish. Thus in Shropshire there were 740 highway parishes, and only 224 poor-law parishes; and in one district of Cumberland there were 66 highway to 36 poor-law parishes. At common law, as we have seen, the duty of maintaining and repairing highways lay upon the parish. The amount of money requisite for this purpose was raised by a highway rate, which was levied on all property in the parish rateable to the relief of the poor, and also on woods, mines, and certain sporting rights. The Highway Act of 1835 adopted the common law for its basis, and provided the machinery by which the parish was to perform its duties. The vestry was required to appoint a surveyor, who held office for a year, and was liable to a penalty if he refused to act. The vestry might, if it thought fit, vote him a salary, and this became the usual course. The surveyor might appoint a deputy, and, by leave of the vestry, he might also appoint a collector. It was his duty to see that the roads were properly maintained, and with the sanction of the vestry he might enter into contracts for their repair. It was also his duty to assess and levy the necessary highway rate. If the vestry made default in appointing a surveyor, it was the duty of the justices to appoint some person to the office. In parishes where the population exceeded 5000, the vestry might appoint a board to discharge their functions in respect of highways. This board was in effect a committee of the vestry; but there were never, apparently, more than nine such boards.

2. Under the Highway Acts of 1862 and 1864, power was given to the Quarter Sessions to combine parishes into highway districts. In the exercise of these powers 424 highway districts, comprising about 9000 highway parishes, were created. Unfortunately, these districts seldom coincided with either the unions or the Petty Sessional Divisions or the sanitary districts, but were an altogether fresh collocation of parishes. Each highway district was governed by a District Highway Board, composed of the justices resident in the district, and of way-wardens elected by the several combined parishes. It discharged all the duties both of a surveyor of highways and also of the vestry which appointed that surveyor. And additional powers were also conferred on a Highway Board; it might raise a loan and appoint other officers; the vestry and the surveyor could do neither of these things. Thus the Board appointed a treasurer, a clerk, and a district surveyor; and it might also appoint an assistant surveyor. (The expenses incurred by a Highway Board were borne partly by a common fund, partly by the different parishes. The common fund was formed by contributions from the several parishes in proportion to their respective poor-law valuations. The amount of the contribution so due from a parish and that of its separate charges for its own roads were levied by a precept. If the parish was not a poor-law parish, the precept went to the way-wardens, and the amount was raised by them by a separate highway rate. In other cases the precept went to the overseers, and the amount was paid out of the poor-rate.) The accounts of every highway parish and Highway Board were audited by the Local Government Board.

By the Highways and Locomotives (Amendment) Act, 1878, it was enacted that where the area of a highway district coincided with the area of a rural sanitary district, the rural sanitary authority—that is to say, the guardians—might apply to the county authority to have the control of the highways transferred to them. If the justices made the order, the guardians thereupon superseded the District Board and became the highway authority. The guardians, however, seldom availed themselves of this provision, as they had quite enough work to do already. Only in 41 cases did guardians take over highway powers.

Thus, in rural districts, and till 1875 in urban districts also, the highway area was either a highway parish or a highway district ; and the highway authority might be a parish surveyor, a parish board, a District Board, or the guardians.

3. In the year 1875, in all urban sanitary districts, the urban sanitary authority—which was then, as we have seen, either a Town Council or a Local Board or Improvement Commissioners, and is now in all cases an Urban District Council—became the highway authority as well. The ratepayers recognised the importance and efficiency of the local sanitary authority, and failed to see the necessity for another local authority, with an area of much the same size, and a separate staff of clerks and offices. So by section 144 of the Public Health Act, 1875, it was enacted that every urban authority should, within its district, exclusively of any other person or authority, execute the office of, and be, the surveyor of highways, and have, exercise, and be subjected to, all the powers, authorities, duties, and liabilities

of a surveyor of highways, and also of the parish vestry by which such a surveyor was appointed. The urban sanitary authority thus became itself "the surveyor of highways" for the district: the surveyor of the urban sanitary authority was only, so to speak, a deputy surveyor with power to do all *ministerial* acts, which a surveyor of highways was required to do by any Act of Parliament. The authority was and still is liable for any wrongful act or neglect committed by its surveyor in the execution of his duties; but the action must be brought within six months after the act complained of.¹ But for a mere omission to repair a road, the highway authority, apparently, is not liable, even though special damage has been directly caused thereby to the plaintiff.

The control of the highways was thus to a very considerable extent taken away from the officers of the highway parish and vested in various Boards. But there still remained in 1894 about 5000 highway parishes which maintained their own roads. The Local Government Act of 1894, however, put an end to all existing highway authorities in every rural district. All Highway Boards have now ceased to exist; all highway parishes have ceased to repair their own roads; and no more surveyors of highways will be appointed for any parish.

4. The newly-created Parish Council is not, speaking generally, a highway authority at all. It rather takes the place of the vestry. It has the very important right of vetoing the stopping up or the diversion of any public

¹ Public Authorities Protection Act, 1893, s. 1.

right of way ; it may refuse to consent to a declaration that any public highway is unnecessary ; it may make a representation to the District Council (and if that be ineffectual to the County Council) complaining of the stoppage or obstruction of any right of way in the parish or in any adjoining district. But it is not bound to maintain any highway in the parish. There is one case and only one in which a Parish Council may, if it thinks fit, employ its funds in maintaining a highway : it may, subject to the restrictions on expenditure imposed by the Act, undertake the repair and maintenance of all or any of the public footpaths within the parish, not being footpaths at the side of a public road ; but neither the existence nor the exercise of this power will relieve the District Council from its general liability to repair and maintain such paths.

5. The County Council is, as we have seen, the highway authority, so far as main-roads and county bridges are concerned. It also has certain powers of compelling a District Council to do its duty. A County Council may also, if it thinks fit, contribute towards the cost of the maintenance, repair, enlargement, and improvement of any highway or public footpath in the county, although the same is not a main-road. But it is not often that a County Council does think fit to make such a contribution.

6. The District Council is now, speaking generally, the highway authority in all parts of England and Wales. Every District Council, whether urban or rural, has as respects highways all the powers, duties, and liabilities of a surveyor of highways appointed by the vestry under the Highway Act, 1835, and of the vestry itself

under that Act or any Act amending the same, and also of an urban sanitary authority under ss. 144-148 of the Public Health Act, 1875. The Rural¹ District Council of any district in which there formerly existed a Highway Board under the Highways Acts, 1862 and 1864, has also all the powers and duties and liabilities of such a Board, which, as we have seen, were in some respects larger than those of a surveyor of highways. The Local Government Board may also confer on any Rural District Council, on its application, any of the powers possessed by an Urban District Council as to highways. The District Council can as a rule exercise all these powers without obtaining the consent of any vestry, Parish Council, or Parish Meeting. Hence now the duty of repairing every highway, other than a main-road, which is repairable at all at public expense, lies *prima facie* on the District Council.

A District Council is invested with wide powers to enable it to repair highways at small expense. It may take road material from any common, waste land, river, or brook in a parish without making any payment. It may gather stones off any man's land after one month's notice, paying compensation for any damage done by the carts, but nothing for the stones. It may open gravel-pits and quarries to obtain road materials, paying both for the material and the damage done in hauling.

¹ The Legislature no doubt intended to confer on every District Council, whether urban or rural, all the powers, duties, and liabilities of a Highway Board. But the language of the section leaves it at least doubtful whether this presumed intention has been carried out with respect to any district in which the highway authority prior to 1894 was a surveyor of highways and not a Highway Board.

Such gravel-pits and quarries must be properly fenced while open, and filled up or sloped down when they are no longer needed. It can order the owner or occupier of any adjoining land to grub up and remove any tree, bush, or shrub planted on any highway within fifteen feet of the centre. It may order its surveyor to prune or lop any trees or hedges which overshadow the highway too much, and exclude the sun and air; to make, scour, cleanse, and keep open all ditches, gutters, drains, and water-courses in and through any land adjoining a highway; and to remove any timber, hay, soil, or rubbish left on a highway so as to be a nuisance. An Urban District Council may, by agreement, undertake the maintenance, repair, cleansing, and watering of any street or road for which they would not otherwise be liable. An Urban District Council may also purchase any premises for the purpose of widening, opening, enlarging, or improving any street, or (with the sanction of the Local Government Board) for the purpose of making any new street. A Rural District Council may widen or improve a highway under their control on their own initiative, and may for the purpose acquire the necessary land by agreement.

Obstruction of a Highway.

It is the duty of every District Council under the Local Government Act, 1894, to protect all public rights of way, and to prevent as far as possible the stopping or obstruction of any such right of way, whether in its own or in an adjoining district, whenever the stoppage or obstruction would, in its opinion, be

prejudicial to the interests of the district. It may for this purpose institute or defend any legal proceedings, and generally take such steps as it deems expedient. And there is no limit of time within which such proceedings must be taken ; no Statute of Limitations runs against a public right of way. Hence the District Council should take proceedings whenever there is clear evidence of a right in the public, even though the path was obstructed before 1894 ; for the Act is not limited to obstruction made since it came into operation.

And though this duty was laid on the District Council as being now the principal highway authority, still it was felt that in many instances the Parish Council or the Parish Meeting would be more vigilant and more anxious to detect any obstruction of a public right of way than the District Council which governs so much larger an area. Hence power is given to the Parish Council (and where there is no Parish Council to the Parish Meeting) to "sound the alarm." If any Parish Council (or Meeting) is satisfied that any foot-path, bridle-path, or other public right of way within the district in which its parish is comprised, or in any adjoining district, has been unlawfully stopped or obstructed, it may make a representation to that effect to the District Council. Thereupon it becomes the duty of the District Council, unless satisfied that the statements made in such representation are incorrect, to take proper proceedings accordingly. If the District Council refuses or fails to take proceedings in consequence of such representation, the Parish Council may petition the County Council of the county within which

the way is situate, and that County Council may then, if it thinks fit, take such proceedings as the District Council might have taken, at the expense of the District Council. But the Legislature did not intend, by giving this power to the Parish Council and Meeting, in any way to limit the duties of a District Council to cases in which it is set in motion by a Parish Council or Meeting. In any case in which it is brought to their notice from any reliable quarter that a public right of way has been obstructed or stopped, it is the duty of the District Council to take proper steps to vindicate the right of the public.

Roadside Strips

The right of the public extends over the whole width of the highway, and not merely over the part which is metalled or trodden down. This has been clear law ever since 1618, whether the highway be a carriage-road, or only a bridle-path or footpath. And it makes no difference that trees, bushes, or furze have for twenty years or more been allowed to grow on the unmetalled portion. Hence whenever there are on either side of a public road strips of land open to the public between the metalled road and the fences on either side, the public right of way *primâ facie* extends over such strips; and it will be for any one who disputes the right of the public to produce evidence to the contrary. In the absence of such evidence, these roadside wastes, however wide, cannot lawfully be enclosed by the owner of the adjoining land or by the lord of the manor or by any other person. It is sometimes supposed that the adjoining owner has a right to enclose up to fifteen feet from

the centre of the road. But this is not the law. He may not even straighten the line of his fences by taking in any portion of such a strip. The public, unless the contrary can be shown, has the right to use the whole space between the original fences; and the District Council has no power to authorise or consent to the enclosure of any portion of that space. The Local Government Act of 1894 makes it the duty of every District Council to protect all roadside wastes within its district, and to prevent any encroachment thereon, whether made before or since the passing of the Act. Should this duty be neglected, the Parish Council is empowered to make a representation on the subject to the District Council. If the District Council still neglects or refuses to take proceedings, the Parish Council may appeal to the County Council, and that body may then take such proceedings as the District Council ought to have taken. Where there is no Parish Council, the Parish Meeting has the same powers.

Provision has been made by various Acts of Parliament for regulating the traffic on highways, with the object of preventing unfair wear and tear of the road and also of ensuring the safety of the public. See, for instance, the Highways and Locomotives (Amendment) Act, 1878, s. 23, the Locomotives Act, 1898, and the Motor Car Acts, 1896 and 1903.

CHAPTER IX

THE BURIAL AUTHORITY

The Parish Churchyard—The Cemetery—The Burial-ground
—Burial Boards—Local Government Act, 1894.

CREMATION is a perfectly lawful method of disposing of a dead body, so long as it is not resorted to in order to avoid a Coroner's inquest, and provided also the process is so conducted as not to be a nuisance. Still, burial has always been the usual method adopted in this country. There is no branch of local government which is so complicated, and so needlessly complicated, as that relating to the burial of the dead.

At common law, everything was simple and clear. Every person dying in England is entitled to Christian burial, unless he died by his own hand, or was unbaptized, or excommunicate. He is entitled to be buried in consecrated ground, whether he was a member of the Church of England, or a Roman Catholic, or a Dissenter. And whether he is a parishioner or not, he is entitled to be buried in the churchyard of the parish in which he died, if there be room there. If a parishioner of one parish die in another, he may be brought back to his own parish, if his relatives wish it, and buried there in

the churchyard of his own parish church. Some privileged persons have the right to be buried in the church itself. Every householder in whose house a dead body is lying is bound at common law to have it decently interred, if no one else comes forward to undertake the duty. Dead bodies cast up by the sea, or any navigable river, or floating or sunken in any such waters, if unclaimed by their relatives, must be buried by the churchwardens and overseers of the parish in which they are found, in the churchyard and at the expense of that parish.¹

As population increased, parish churchyards became insufficient to meet the requirements of the parish. They are, moreover, frequently ordered to be closed for sanitary reasons. When the parish churchyard is no longer accessible, provision is made for the burial of the dead in three ways:—

First, there are cemeteries made and maintained as commercial undertakings under special Acts of Parliament. These undertakings were sufficiently numerous, even in 1847, to make it expedient to pass the Cemeteries Clauses Act, which contains a series of model clauses for adoption into the special Acts.

Secondly, by the Public Health (Interments) Act, 1879, the provisions of the Cemeteries Clauses Act, 1847, are incorporated into the Public Health Act. The effect of this is, that any District Council, Rural or Urban, may now make and maintain a cemetery for its own district, and exercise all the powers given by the Act of 1847. The cemetery for the district may, in certain cases, be situated outside the district. Moreover,

¹ Burial of Drowned Persons Acts, 1808 and 1886.

under the Act of 1879, the Local Government Board has power to compel a District Council to provide a cemetery when one is urgently needed ; as, for example, where there is insufficient burial accommodation for the neighbourhood, or where the water-supply of the locality is polluted by the existing cemetery or churchyard, or the health of the inhabitants otherwise endangered.

Thirdly, burial-grounds may be provided under a series of thirteen Acts extending from 1852 to 1900, commonly known as the "Burial Acts." As usual, we find two distinct sets of Acts dealing with the same subject. Any parish, district, or township may adopt the provisions of these Acts, and more than 900 Burial Boards have been constituted under them. The Burial Board is elected by the vestry. It must consist of from three to nine ratepayers of the parish. The members hold office for three years, one-third retiring annually. As vacancies occur, the Board may fill them up, if the vestry do not. The Board, with the consent of the Local Government Board, may mortgage the rates in order to pay for a burial-ground. The Board manages the burial-ground, subject to regulations made by the Local Government Board ; and, subject to its approval, fixes the table of fees for interments. Parishes may concur in forming a joint Burial Board, with a common burial-ground ; and a Burial Board, instead of providing a ground of its own, may contract for accommodation in the ground of some other authority. There are some rather complicated provisions in the Burial Acts, under which a Town Council or other urban sanitary authority may acquire the powers of a Burial Board within its own area.

There are many (wholly unnecessary) refinements and

distinctions between "cemeteries" under the Cemeteries Clauses Act, and "burial-grounds" under the Burial Acts. A Rural District Council may provide the former, not the latter. If the Burial Acts are adopted and a burial-ground provided in accordance with their provisions, a portion of it, if a reasonable number of persons within the area so desire, must be tendered to the bishop of the diocese for consecration; whereas it is not necessary that any portion of a cemetery should be consecrated at all. Then, again, no part of a cemetery may be laid out within 100 yards of a dwelling-house; in the case of a burial-ground all that the Burial Acts require is that no one shall be buried within 100 yards of any dwelling-house, without the consent of its owner and occupiers; and in neither case is such a consent now required where there is a subsequent erection of dwelling-houses in closer proximity to the graves!¹

The Local Government Act, 1894, treats the law as to burials in a halting and half-hearted fashion. Such of its provisions as deal with this subject (unlike the rest of the Act) are complicated and far from clear. The complication is caused, as usual, by the interlacing of areas: the boundaries of the district of a Burial Board do not necessarily coincide with those of an urban district or a rural parish; they sometimes contained portions of both. Each case had to be dealt with separately. In some cases the existing Burial Board was continued; in others it ceased to exist; in others power was given to some other body to cut short its existence at pleasure. Two cases, however, are simple and can be dealt with here. When the area under a Burial Board was one entire rural parish,

¹ Burial Act, 1906 (6 Edw. VII. c. 44).

all the powers, duties, and liabilities of the Burial Board were transferred to the Parish Council as soon as it came into office. The Burial Board *ipso facto* ceased to exist, and its place was taken by the Parish Council, without any action on the part of the Parish Meeting. But if a rural parish had no Parish Council, the Burial Board continued, and the Parish Meeting has no powers under the Burial Acts, unless the County Council, on the application of the Parish Meeting, has conferred on it the powers of a Parish Council in this matter. Again, where a Burial Board district lay wholly in an urban district power was given to the Urban District Council to resolve that the powers, duties, and liabilities of the Burial Board shall be transferred to itself on a specified date. If such a resolution is passed, the transfer takes place and the Burial Board ceases to exist on the specified date. Till such a resolution is passed, the Burial Board for such a district continues, unaffected by the Act.

In future, no Burial Board can be created in any rural parish which has a Parish Council. If in such a parish the Parish Meeting should think fit to adopt the Burial Acts, for the whole or part of the parish, no Burial Board will be elected, but the Parish Council will be the authority for the execution of those Acts. But in any rural parish which has no Parish Council, a Burial Board may still be newly established, if there is no existing Burial Board which includes that parish in its area, and if the Burial Acts are duly adopted by the Parish Meeting. Any such Burial Board will have power to provide a cemetery.

In 1894 there were 919 Burial Boards, and there

were 86 Town Councils, 58 Local Boards, and one body of Improvement Commissioners acting as Burial Boards, making a total of 1064. There are now 223 Burial Boards still in existence ; there are 231 Joint Burial Committees created under sec. 53 of the Local Government Act, 1894, and an amending Act of 1897 ;¹ while 120 Town Councils, 157 Urban District Councils, about 453 Parish Councils, and 19 Metropolitan Boroughs have the powers of a Burial Board.

All special burial districts should be abolished. All distinction between cemeteries and burial-grounds should be swept away. A step in this direction was taken by the Burial Act, 1900, but there is still need of a more stringent measure. Every public place of burial should have one portion consecrated, and another unconsecrated ; and any ratepayer should be at liberty to bury his dead in whichever portion he may prefer. Every Urban District Council should have a cemetery of its own, and appoint a committee of its own members to manage it. In every rural parish the burial authority should be the Parish Council, where there is one ; parishes which have no Parish Council might be grouped and send representatives elected at their respective Parish Meetings to serve on a Joint Committee.

¹ 60 & 61 Vict. c. 40.

CHAPTER X

THE COUNTY

The Administrative County—History of the Shire—Divisions of the County—Its Officers: the Sheriff, the Lord-Lieutenant, the Coroner, and the Justices of the Peace—The County Council: its constitution and powers—County Finance.

FOR certain administrative purposes England is divided into counties. The term "county" is the Norman equivalent of the old Saxon "shire." A third synonym, the hybrid word "bailiwick," is still sometimes used in legal phraseology. We all learnt at school that there were 40 counties in England and 12 in Wales. But Yorkshire has three ridings, Lincolnshire has three parts (the parts of Holland, of Kesteven, and of Lindsey), and Suffolk and Sussex have each an eastern and a western division; and each of these ridings, parts, and divisions is for purposes of local government a separate county. To these must be added the Isle of Ely, the Soke of Peterborough, and the newly-created administrative counties of London and the Isle of Wight, bringing the number up to 62. And in each of these 62 counties there is now a County Council.

In addition to the counties properly so called, there is the City of London, which is still for judicial purposes a separate county, distinct from either the ancient county of Middlesex, or the newly-created county of London. Then there are, as we have seen, 19 boroughs called "counties of cities" and "counties of towns," which are outside the jurisdiction of the counties in which they are situate, and which, for many purposes—chiefly in relation to the administration of justice—have themselves the organisation of a county. There are also now 72 county boroughs, which are for most purposes independent of the county authority, and make little or no contribution to the expenses of county administration.¹ Formerly too there were many liberties exempt from county jurisdiction; but nearly all of them now are merged and obliterated in the counties within which they were situated. The Cinque Ports, however, still retain some of their former privileges.

Counties differ much both in size and population. Rutland contains 97,273 acres, and 19,709 inhabitants; Lancashire contains 1,203,365 acres, and has a population of 4,406,409 persons; while the administrative county of London, with only 74,839 acres, has a population of 4,536,541. The area of the county has no necessary relation to any other local government area, except the county district and the obsolete hundred. The boundaries of the county are still intersected by the boundaries of boroughs, unions, and school districts, and in a few cases also of parishes.

¹ See *ante*, pp. 95-97.

History of the Shire

The word "shire" means share, any portion shorn off; thus the diocese of a bishop was sometimes called his "shire." But the word soon came to denote exclusively a portion of the land cut off from the rest for separate local administration. The division of England into shires dates as far back, at any rate, as the reign of King Edgar; and the modern English counties correspond, as a rule, with the Saxon shires and bear similar names. The number of the counties, however, was smaller at first, and their boundaries certainly fluctuated, especially on the Scotch and Welsh borders. It was not till the reign of Henry VIII. that England and Wales were definitely mapped out into the 52 counties which we see on the school-map.

In Saxon times the government of the shire was democratic. The *shire-moot*, its governing assembly, was largely representative. It was composed of all lords of lands, and of the reeve and four "best men" from each township. At the head of each shire was an *ealdorman* or earl, who was originally appointed by the king in the Witenagemote. He was generally the largest or most prominent landowner in the shire; he presided at the shire-moot. The bishop also had some share in the administrative business of the county. Later, as centralisation developed and the earl came to be too important a personage to attend to the details of local government, the king appointed a sheriff (*shire-reeve* = county-steward) to proclaim the king's dues, to preside over the shire-moot in the absence of the earl, and to act as the chief police officer of the shire. The sheriff often held office

for life, and he gradually ousted the earl from actual power in the shire. Under King Edgar the shire-moot met twice a year. Its functions were at once administrative, legislative, and judicial. The suitors—that is, all who attended—were the judges. The power of the Central Government was but little felt, and the various shires were almost as independent as the different States now are in the United States.

In early Norman times much of this independence was preserved. The county court was still largely a representative assembly. At first, indeed, nothing changed except the names. The earl became a count (the king's *comes* or companion); the shire became the county (*comitatus*); and the shire-moot became the county court. Henry I. sent his judges to the county courts to hear and decide revenue cases only. Under Henry II., however, the royal power made itself more felt. His justices in eyre made their circuits through the land, and tried the more important criminal and civil cases. They tried them, it is true, in the county court. But the regular attendance of the king's justices at that assembly tended to curb the power of the sheriff, and prevented the feudal barons from obtaining independent courts such as they possessed in France. By the Assize of Clarendon (1166) all landholders were obliged to attend the county court twice a year to meet the king's justices. This was the origin of the county Assizes. The office of ealdorman or earl declined, and the chief officer of the county was the sheriff, who was a nominee of the Crown and the farmer of the royal taxes. The county court of the thirteenth century, when it met in full session, as it did twice a year to

receive the king's justices in eyre, was attended by the bishop, abbots, priors, earls, barons, knights, and freeholders ; by four men and the reeve from each township ; and twelve burghers from each borough. The ordinary court sat once a month, and was attended only by those who had special business there.

Under Edward III. the county court rapidly declined. Its criminal jurisdiction was taken from it and divided between the judges on circuit and the county justices, who are nominees of the Crown. The judicial functions of the suitors are now represented by the jury system, which has slowly developed ; and the right of the grand jury to make presentments on matters of local interest or importance is perhaps a survival of the old right of the county in its corporate capacity to approach the Crown. The civil jurisdiction of the county court has been transferred either to the High Court or to the new statutory county courts established in 1846, whose circuits have no relation to county boundaries, and whose judges are barristers appointed by the Crown. The ancient county court, presided over by the sheriff, now never meets. For parliamentary elections the counties have been subdivided into divisions, which, for electoral purposes, are distinct counties. The county coroner is no longer elected in the county court, but by the County Council. If any one were outlawed, his outlawry must be proclaimed in the county court ; but no attempt to outlaw any one has been made since 1859 ; and, indeed, outlawry in civil cases was abolished in 1879. In theory, it is still the duty of the sheriff to proclaim in the county court all new Acts passed by the Legislature.

But there its functions end. The present administrative work of the county has been created by a series of statutes ranging from Tudor times down to the present day ; but the body appointed to do this work was not the old county court, but the justices of the peace for the county assembled either in quarter or special sessions.

Divisions of the County

The Saxons found it necessary for purposes of local government to create an area, larger than the township but smaller than the shire, which they called the *hundred*. Each shire was roughly divided into so many hundreds. The division was not made on any clear system ; counties of very different size, such as Lancashire and Middlesex, had the same number of hundreds (six), while Kent and Sussex had at least sixty. In the Danish counties the hundreds were known as *Wapentakes*. Each hundred had its court, which was regularly attended by the reeve and four "best men" from each township. That court had jurisdiction in matters affecting law and police, but it could decide no question as to the title to land. William the Conqueror allowed the hundred court to meet as of old, and decreed that if a Norman were killed in any hundred, and the murderer was not promptly brought to justice, the hundred should be severely fined. But in the reign of Edward III. justices of the peace were appointed ; and as the office became general and the duties of the justice increased, those of the hundred court dwindled and gradually became obsolete. The head officer of the hundred was the high constable. In a few hundreds a high constable is still appointed

for old custom's sake. But he has no duties to perform; and all necessity for such an appointment was taken away in 1869. The ordinary constables of the hundred had previously (in 1856) been merged in the county police. One relic still lingered till quite recent times. If a riot broke out and any man's house or property was injured by the mob, he could claim compensation from the inhabitants of the hundred in which the house or property was situated. But even this last trace has now disappeared; such a claim must now be made against the police authority of the district;¹ and the hundred exists only on the county map.

The place of the hundred has been taken, as we have seen,² by the county district. Every county now contains so many county districts, and the whole of every county district lies, almost without exception, in the same county.

The area for poor-law purposes is still the union; and many unions still cut county boundaries. For purposes of the criminal law every county is also divided into petty sessional divisions. The justices resident in each such division meet every month, or oftener, at some market town which is conveniently central, to dispose of petty cases and to send more serious offences for trial at Quarter Sessions or the Assizes. A division of this kind is generally of about the same area as a union. The justices in Quarter Sessions have power under 9 Geo. IV. c. 43, to rearrange and adjust the boundaries of these divisions; and in some counties they are already trying to make the petty sessional divisions coincide,

¹ Under the statute 49 & 50 Vict. c. 38.

² See *ante*, chap. vi. p. 130.

so far as possible, with the unions. It is illogical and inconvenient that a county should for different purposes be cut up into three distinct series of areas.¹ If it could be arranged that the same area should be always both a union and a petty sessional division, and should either be itself a county district or should consist of two or more entire county districts, a further step of some importance would have been taken in the direction of simplifying and facilitating the government of our counties.

The civil officers of a modern county are the Sheriff, the Lord-Lieutenant and *Custos Rotulorum*, the Coroner, the Justices, the Clerk of the Peace, the public analyst, the county surveyor, and the county police.

The Sheriff

The office of Sheriff dates back to the time when the shires themselves were formed. The sheriff was originally appointed for life; but by a statute of Edward III.² it is provided that "no sheriff shall tarry in his bailiwick over one year; and then another convenient shall be ordained in his place that hath land sufficient in his bailiwick by the Chancellor, Treasurer, and Chief Baron of the Exchequer, taking unto them the Chief Justice of the one bench and the other if they be present; and

¹ The counties are also divided into police divisions and into county court districts. But these divisions have little or no connection with the divisions of the county for purposes of local government. For further information on these subjects, the reader is referred to another volume in this series, *Justice and Police*, by Professor F. W. Maitland.

² 14 Ed. III. st. i. c. 7.

that shall be done yearly on the morrow of All Souls at the Exchequer." In accordance with this statute, the judges of the High Court and the officers of the Exchequer still meet annually on November 12th and prepare a list of qualified persons, three for each county. This list is submitted to the King, who makes a pin-prick opposite the names of the ones he selects. Hence the ceremony is called "pricking the sheriffs." Cambridgeshire, Huntingdonshire, and the Isle of Ely have but one sheriff between them. There was no separate sheriff of Middlesex till 1889.¹ The Prince of Wales as Duke of Cornwall appoints the sheriff of Cornwall. Nineteen boroughs have also sheriffs;² and so has the City of London.

The sheriff is an unpaid officer, and he is liable to a heavy fine if he refuses to serve. During his year of office he may not act as a justice of the peace. He takes precedence of all persons in the county, except the judges on circuit. His main duties are to attend on the judges, to summon and return juries, and to act as the executive officer of the High Court. He issues executions and otherwise enforces all judgments of the High Court. Formerly all prisoners were held to be in his custody, but this jurisdiction was taken from him by an Act of 1877, which transferred all prisons to the Central Government. He is also returning-officer at parliamentary elections for the county. His ministerial duties are discharged by the under-sheriff, but the sheriff is responsible for their due performance.

¹ See *post*, p. 222.

² See *ante*, p. 96.

The Lord-Lieutenant

The office of Lord-Lieutenant dates from the time of Henry VIII. He holds office under a special commission from the Crown, and is usually a peer or other large landowner. His office was to some extent a revival of the ancient ealdormanhood, and it certainly took away from the sheriff a great part of the dignity and importance which he had acquired since the decline of that office. His authority, however, was almost exclusively military; in civil matters the sheriff remained the executive minister of the law. The militia, under the lord-lieutenant, took the place of the *posse comitatus*, headed by the sheriff. But by an Act of 1871 the jurisdiction of the lord-lieutenant over the militia has been taken from him and revested in the Crown. The lord-lieutenant usually holds also the office of *custos rotulorum*, or keeper of the records; and as such he is the principal justice of the county. So far as county administration is concerned, his main duty is to recommend to the Lord Chancellor persons qualified for the office of justice of the peace. He also appoints Deputy Lieutenants, subject to the approval of the Crown.

The Coroner

The office of Coroner is a very ancient one, dating back, at any rate, to the reign of Richard I. It is regulated partly by common law, partly by a series of 51 statutes, beginning in 1275, and ending with an Act of 1888. In spite of their name, which suggests that they were appointed by the Crown, the county coroners

have always been elective officers. Till 1888 they were always elected "by the commons of the counties" in the full county court. They are now elected by the County Council. There are 241 county coroners acting for counties or divisions of counties. Boroughs that have a separate Court of Quarter Sessions, and had according to the census of 1881 a population of not less than 10,000, elect their own coroners. There are also certain franchises and liberties which have coroners of their own, called franchise coroners, and within whose precincts the county coroner cannot act. In such places the coroner is usually appointed by the lord of the manor, but in one franchise in Cheshire the office is said to go with an hereditary horn. In a manor in Essex the tenants appoint. In another franchise the Ecclesiastical Commissioners appoint. The coroner of the Admiralty of England is appointed by the President of the Admiralty Division of the High Court; the coroner of the King's household by the Lord High Steward.

Although the office is judicial in its nature, no professional qualification is required. The statutes of Edward I. and Edward III. merely insist on coroners being "sufficient men" "chosen of the most meet and lawful people that shall be found in the said counties to execute the said office." The only other requisite is that the candidate should possess some freehold interest in the county. (A share in a freehold grave has been held sufficient. A county coroner ordinarily holds office for life, but may be removed by the Lord Chancellor for misconduct or incompetence. He is paid a salary, the amount of which may be revised every five years. In case of illness or unavoidable absence he may appoint a

deputy to act for him, who must be a barrister, a solicitor, or a medical man. The coroner is *ex officio* a justice of the peace, and he may therefore cause any person suspected of homicide to be apprehended, even before the jury have found their verdict. But he may not be elected a county alderman or councillor of the county for which he is coroner.

Coroners formerly held inquisitions concerning wrecks, treasure trove, and deodands, but this part of their jurisdiction is now obsolete. A county coroner has no power to inquire into incendiary fires. But the coroner of the City of London has this exceptional power. If any loss or injury is caused by fire within the city or its liberties, he may, if he thinks there is proper cause, hold an inquest to "inquire into the cause and circumstances of such fire"; and if the jury think that the fire "was caused by the wilful and unlawful act of any person," they may find a verdict of arson against him, and, if he has been present during the proceedings, the coroner may at once commit him for trial.¹

The main function of every coroner, however, is to hold an inquest, with a jury, over the body of any person who has been killed, or who has died in prison, or who has died suddenly, if the cause of death be unknown. The inquisition must be held *super visum corporis*; that is to say, the body must be viewed both by the coroner and by the jury. The jury, which must consist of not less than twelve, nor more than twenty-three good and lawful men, are sworn by the coroner, and are then charged to inquire how the deceased came by his

¹ 51 & 52 Vict. c. xxxviii.

death. Witnesses are examined on oath, and the coroner has power to order a *post-mortem* examination of the body, and the attendance of medical witnesses. The finding of the jury is recorded in writing, and is attested by the signatures and seals of the jury, as well as of the coroner. If on such finding or inquisition any person is found guilty of murder or manslaughter, the coroner commits him for trial, and the accused may be indicted on the inquisition without any presentment by the grand jury. As a fact, however, an independent inquiry is always held before the justices in the ordinary way, and both sets of depositions are sent up and dealt with at the Assizes.

Justices of the Peace

The office of Justice of the Peace dates from the statute 34 Ed. III. c. 1. There is no limit to the number of justices that may be appointed in any county. Justices are appointed by the Crown on the recommendation of the lord-lieutenant. They are unpaid; they elect their own chairman. They hold office for life, but may be removed for misconduct by the Lord Chancellor. A Justice of the Peace was formerly required to have an estate qualification, viz. the enjoyment of an estate in possession of £100 a year, or the reversion in an estate of not less than £300 a year, or two years' assessment to the Inhabited House Duty at not less than £100 a year, but this was abolished in 1906.¹ A justice is appointed for the whole county; but, except in Quarter Sessions, he only acts in practice in the petty sessional division in or near which he resides. His judicial

¹ Justices of the Peace Act, 1906 (6 Edw. VII. c. 16).

functions, though defined and limited by statute, depend ultimately on the terms of his commission. The form of the commission was settled by the judges in the time of Queen Elizabeth and has remained substantially the same ever since. Any two or more justices acting in their own division constitute a petty sessions. When a petty sessions is summoned by special notice given to all the justices "acting in and for" the petty sessional division, it is called a special sessions.

By a long series of statutes all the administrative work of the county was placed in the hands of the justices. And the work was well done. They maintained the county bridges, the shire halls, the pauper lunatic asylums, and the county police. They appointed the county analyst and the inspectors of weights and measures. They formed highway districts and compelled highway boards to repair the roads. They visited lunatic asylums. In petty sessions they appointed the overseers, and granted licenses for the sale of intoxicating liquors. In every other department of the State the rule was that representation must go with taxation. But the county ratepayers did not wish to be represented: they cheerfully and contentedly acquiesced in the existing arrangements, under which nominees of the Crown, over whom they had no control, spent their money and managed their county business; for they knew that the money was well spent and the business well managed. But at last the principle of representation gained the day; and the Local Government Act of 1888 was passed, which created in each of the 62 administrative counties a representative body directly elected by the ratepayers, called the County Council,

and transferred to it the administrative business of the county.

The County Council

The main object of the Local Government Act, 1888, was, so far as possible, to give to counties that form of municipal government which had previously pertained only to English boroughs. That is the guiding principle which underlies all its provisions. Of course, much adaptation was necessary—as a borough is essentially different from a county. Every County Council was made a corporation: it has perpetual succession and a common seal; it can acquire and hold land without any licence in mortmain. All county property, real and personal, was transferred to it, except the records of the Court of Quarter Sessions. The number of its members varies according to the size of the county—from 28 for Rutland and 32 for Radnor, to 120 for the West Riding and 137 for London. One-fourth of the members of a County Council are county aldermen. The ordinary councillors are elected by the county electors for a period of three years. At their first meeting in each such period they elect half the number of aldermen. The aldermen hold office for six years, half their number retiring every third year. The aldermen are often chosen from the existing councillors; but this is not necessary; any one qualified to be a councillor may be elected an alderman. If a man who is already a councillor be elected alderman, he vacates his seat as a councillor.

A roll is kept in each county of the persons qualified to vote at an election for the County Council. A county

elector may be a man or a woman, but must be either enrolled as a burgess of some borough which is not a county borough, or registered as a county elector under the Act of 1888 (51 & 52 Vict. c. 10). Speaking generally, every person, male or female, who (a) has during the twelve months preceding the 15th July in any year occupied any building (or any land of the clear yearly value of £10) rated to the relief of the poor, (b) has resided in the borough or parish, or within seven miles of it, during such twelve months (or in the case of the £10 occupier, for six months), and (c) has paid all rates which have been assessed in respect of such property up to the 20th July immediately following, is qualified to be so enrolled or registered, unless he or she is under age, or is insane, or an alien, or has been within the preceding twelve months in receipt of poor relief, or is disqualified by any specific Act of Parliament, *e.g.* for bribery. The burgesses of a county borough are exempt from the jurisdiction, and therefore take no part in the election, of any County Council. And no county elector, though registered in more than one electoral division of the same county, may vote in more than one division at the same County Council election.

To be eligible as a county councillor, a man must be a parliamentary voter, registered as such in respect of ownership in the county ; or a peer owning property in the county ; or be qualified to be registered as a municipal elector in any borough which is not a county borough ; or qualified in all respects save that of residence to be a municipal elector in any borough not a county borough, resident within fifteen miles of the

borough, and liable to be rated in respect of property therein above a certain limit of value. But no woman can be elected a county councillor; nor can any person holding any paid office in the gift of the council; nor any person who has an interest, direct or indirect, in any contract with the Council; nor an uncertificated bankrupt for five years after his discharge. But a clerk in holy orders or a dissenting minister may be a councillor, and therefore an alderman.

Powers of the County Council

To the County Council were transferred all the powers and duties of justices in Quarter Sessions relating to matters of local government. But no judicial powers were transferred. A County Council is an administrative body, not a court. The control of the county police and the appointment of the chief constable is vested in a joint committee of the County Council and the county justices. The justices still hear rating appeals and all applications for licenses to sell intoxicating liquors. But in most other local concerns the County Council now governs the county. It can make by-laws for the regulation of the county in the same way and to the same extent as a Town Council can for the regulation of a borough. It repairs all main roads and county bridges. It provides, maintains, and visits pauper lunatic asylums, reformatories, and industrial schools. It prevents the pollution of rivers; it carries into execution the laws relating to destructive insects and contagious diseases in animals; it protects wild birds, and conserves fish. It is the local education authority for the county; it registers

Dissenting chapels, and the rules of various societies. It appoints the county coroner, the county treasurer, the county surveyor, the public analyst, and the officers under the Explosives Act, 1875. It directs the registration of voters and fixes the polling stations for parliamentary elections. It regulates all Local Government elections. It pays the salary of the clerks to the justices, and the cost of the Assizes and Quarter Sessions; it pays half the cost of the clothing and pay of the county police; it makes the assessment for the County rate and levies that and the Police rate. It grants licenses for music and dancing and for racecourses; it insists on the use of proper weights and measures; it protects the purchaser of coal and bread. It can by Provisional Order authorise the compulsory purchase of land for allotments and other purposes. It may promote and oppose Bills in Parliament, and prosecute and defend all necessary legal proceedings in the same way as the corporation of a borough.

Moreover, the Local Government Board may by Provisional Order transfer to a County Council any other powers, duties, or liabilities of any Court of Quarter Sessions or of the justices of any county under any local Act which are similar in character to those mentioned above or which relate to any property transferred to the County Council. The Local Government Board may also by Provisional Order transfer to a County Council any of the statutory powers, duties, and liabilities of His Majesty's Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, or the Board of Education, or any other Government department, which relate to matters aris-

ing within the county, and are of an administrative character; also any similar statutory powers, duties, and liabilities arising within the county, of any Commissioners of Sewers, Conservators, or other public body, corporate or unincorporate, except the corporation of a borough, or an Urban or Rural District Council, or a Board of Guardians.

These extensive powers have been enlarged by the Local Government Act of 1894. The County Council is now called upon to exercise a kind of general supervision over Parish and District Councils. It settles their areas and boundaries; it arbitrates between them, if they quarrel; if they neglect their work, the County Council has in many cases to do it for them. The consent of the County Council is necessary before a District Council can exercise any powers over a common or aid a commoner to maintain his right of common. It can establish a Parish Council in a parish which has a population of less than 300 persons, or group small parishes together and give them a common Parish Council; should the population increase, it can dissolve the common Parish Council, and separate the group of parishes. It can divide large rural parishes into wards for the purpose of electing parish councillors. It fixes and can alter the number of guardians and rural district councillors for each parish within the county. It sees that all parish books and documents are properly preserved. It can hold local enquiries; it can itself acquire the powers of a District Council, or employ a District Council as its agent. In fact it is made the duty of the County Council to see that the new system of local government works properly all over the county.

By the Education Act, 1902, the County Council was made the Local Education Authority for its county (see chap. vii.). Various other important powers and duties have been given to County Councils by numerous Acts of Parliament, of which it may be sufficient to mention here the Shops Regulation Acts 1892 to 1904, the Inebriates Act 1898, the Small Dwellings Acquisition Act 1899, the Ancient Monuments Protection Act 1900, the Employment of Children Act 1903, the Motor Car Act 1903, and the Unemployed Workmen Act 1905.

County Finance

The financial year for the county runs from April 1st to the 31st of March ensuing. At the commencement of each financial year an estimate of the probable receipts and expenditure during that year is prepared and laid before the Council. At the close of each financial year its accounts are made up, and a *résumé* of them published. Any ratepayer may inspect the original accounts, which are subsequently audited by a District Auditor appointed by the Local Government Board. A Finance Committee is regularly appointed to attend to the financial business of the Council; and three members at least of this Committee must sign every order for the payment of money.

The income of a County Council is drawn from many sources. It receives a certain amount in the shape of fines inflicted for breach of by-laws or statutes. It derives some small income from its property in the shape of tolls, rent, royalties, etc. It also receives a share of the license duties collected by the Imperial Government in the county, together with a proportion of the estate duty collected in the United Kingdom.

These contributions from the Imperial Exchequer are carried to a separate account, called the "Exchequer Contribution Account"; and they must be devoted primarily to the payment of poor-law officers, medical officers of health, registrars of births and deaths, and other statutory officials, and cannot be used for the general purposes of the county till these prior claims are satisfied. Then by the Local Taxation Act, 1890, a certain portion of the English share of the customs and excise duties may be distributed between county and county borough funds, to be used primarily for payment of the officials mentioned above, and then for purposes of higher education. These Treasury subventions to the extra-Metropolitan County Councils amounted in the year 1902-3 to £3,773,240.

The income derived from these various sources is far from sufficient to meet the expenditure for general county purposes. Hence each County Council levies a county rate under the County Rates Act, 1852. And for this purpose it has its own Assessment Committee, which may either adopt the existing poor-law valuation or make a valuation of its own. It frequently adopts the poor-law valuation with certain modifications, which are generally in favour of the ratepayer. It then divides the amount to be raised among the various parishes in the county (except those that are comprised in one of the larger Quarter Sessions boroughs), according to the value of the property comprised in each parish. The Council issues its precept to the guardians of each union, bidding them collect from each such parish the amount so found due from it. The guardians pay the amount to the county treasurer, and recover it from the overseers

of each parish. If the amount be not paid by the guardians within the time named in the precept, the County Council may themselves order the overseers to collect the amount due from each parish; and, if they fail to do so, may distrain on the overseers. All appeals against a valuation or a rate are still heard as heretofore by the justices or a Recorder in Quarter Sessions, and not by the County Council. The total amount raised by the county rate outside the Metropolis was, in the financial year 1902-3, £2,947,721.

All moneys received by or on behalf of a County Council from any source other than the Imperial Exchequer are carried to its County Fund Account. Money can only be drawn out of that account by the county treasurer, and he will draw none out without an order of the Council, signed by at least three members of the Finance Committee. All moneys so drawn out can only be used to meet expenditure incurred by the County Council in the exercise of its statutory powers or in the due execution of its statutory duties. The total expenditure of the extra-Metropolitan County Councils (not including the cost of works, etc., defrayed out of loans) was, in the financial year 1902-3, £8,448,094.

But a County Council cannot be expected to meet all its expenses out of its annual income. Some portion of its expenditure is of permanent value, and its cost may properly be spread over several years. A County Council is therefore entrusted with considerable powers of borrowing money on the security of the county fund and of any revenues of the Council. It may from time to time, with the consent of the Local Government Board, borrow such sums as may be required for consolidating the debts

of the county ; or for purchasing any land or erecting any building which the Council are authorised by any Act to purchase or build ; or for any permanent work or other thing which the County Council are authorised to execute or do, and the cost of which ought, in the opinion of the Local Government Board, to be spread over a term of years ; or for the other purposes mentioned in s. 69 of the Local Government Act, 1888. But the Local Government Board cannot, without the express approval of Parliament, sanction any loan which will bring the total debt of a county above a tenth of the rateable value of the property within its area. The loan may be secured either by "county stock" issued under the provisions of the Act of 1888, by debentures or annuity certificates under the Local Loans Act, 1875, or by mortgage under the provisions of the Public Health Act, 1875. But every loan must be repaid within thirty years by equal yearly or half-yearly instalments, or by means of a sinking fund. The total amount of the outstanding loans of the County Councils outside the Metropolis in 1896 was £3,465,293. In 1903 it had increased to £6,911,328.

CHAPTER XI

THE METROPOLIS

The Administrative County of London—Confusion of Areas and Authorities prior to 1888—History of London and its Suburbs—The Metropolitan Board of Works—The London County Council—Metropolitan Borough Councils—The City of London—The Local Education Authority—Metropolitan Poor-law Authorities—Metropolitan Water Board, etc.

THE Metropolis is the area of the new administrative county of London, which was created by the Local Government Act of 1888. It is identical with the area over which the defunct Metropolitan Board of Works had formerly jurisdiction. It includes the City of London. For judicial, police, and other purposes, it is true, there still exist in the Metropolis two “non-administrative counties,” viz. the county of London and the county of the City of London. But for most purposes of local government the City is a subdivision of the administrative county of London, which includes the whole Metropolis.

The boundaries of this administrative county are defined by the Metropolis Management Act, 1855, as amended by subsequent Acts. They include an area of

121 square miles and a population, in 1901, of 4,536,541 persons. The City of London has an area of only 671 acres—just over one square mile—and a population in 1901 of 26,923 ; at least, that is its “sleeping population.” The whole administrative county of London is one education area. It is cut up into 58 Parliamentary boroughs or divisions of boroughs. A small portion of it is outside the Registrar-General’s Tables of Mortality ; but the whole county lies within two larger districts—the Metropolitan Police District and the district of the Central Criminal Court.

It is impossible within the limits assigned to this little volume either to relate the history of London or adequately to describe its present system of government. Mr. Chalmers wrote in 1883 : “The confusion which reigns supreme over local affairs in the rest of England is only worse confounded in the case of the Metropolis.” Much has been done since 1883 to improve this state of things ; but much remains to be done. There is still no uniformity, no harmonious system about the government of London. To give a methodical and accurate account of London government is as difficult as to describe the pattern on a patchwork quilt. Whenever a crying necessity arose, resort was had to some exceptional expedient ; some special authority was created to meet the need of the hour. The plan of putting a new legislative patch on to the old garment was consistently pursued with the usual result. The constitution of the City of London is regulated by 120 charters, some 50 general Acts, and an unknown quantity of special Acts. London outside the City is regulated by about 120 general Acts supplemented by an unknown quantity of

special Acts. Besides the City Corporation and the London County Council, there are 30 Boards of Guardians and 28 Borough Councils in the Metropolis, to which must be added the Metropolitan Asylums Board, the Thames Conservators, the Lea Conservators, and a few minor authorities. In many matters the London County Council has jurisdiction over the whole Metropolis. Certain statutory powers,¹ on the other hand, can be exercised by the London County Council only in that portion of the Metropolis which is outside the City ; in the City they are exercised by the Common Council. Then, again, in a few matters (such as the provision of markets, the inspection of animals imported from abroad, and the sanitary administration of the Port of London) the Corporation of the City has jurisdiction over the whole of the Metropolis. The fact that the Metropolis is so well governed as it is speaks volumes for the practical sagacity and honesty of purpose of the men who work such cumbrous and intricate machinery.

Before saying anything more as to the existing authorities, it will be well to give the reader the briefest sketch of the history of our great city.

¹ Such, for instance, as those conferred by the Explosives Act, 1875, and the provisions of the London Building Act, 1894, which forbid the erection of any new sky-signs.

Outline of the History of London

Some of our ancient cities, such as Winchester, Chester, and York date back to Roman times. Winchester even claims a British origin. No doubt there was once a Roman colony on the spot now occupied by the City of London. But London cannot show a continuous municipal history from that date till now. Twice at least since the Romans retired from England, London was left unpeopled and empty, with only the bare Roman walls still standing.

During the early portion of the Roman occupation of Britain, London was nothing more than a fortified barrack, posted on a hillock that rose out of the marshes of the Thames, and occupied by soldiers and camp-followers. This fort must have stood on or near the spot which is now occupied by Ludgate Hill Railway Station. As trade developed, non-combatants came to reside under its shelter; and London grew to be a colony. About A.D. 340, in all probability, municipal institutions were created. And at some date between A.D. 350 and 370 the famous Roman wall was built—we do not know by whom—enclosing the town and a large tract of open country as well. About the same time an unsuccessful attempt was made to re-christen the colony Augusta. In A.D. 410 the Romans quitted Britain. But London remained a strongly fortified town; and at first it stoutly resisted the Saxon invaders; its walls rendered it almost impregnable. But either it was eventually abandoned by the Britons or it was starved out. At some unknown date in the sixth century the Saxons became masters of it, and held it till in A.D. 839, the Danes in their turn

captured the town and drove the Saxons out. The Danes burnt and destroyed all the buildings, and did what they could to destroy the walls, and then left it empty and desolate. It cannot, therefore, be maintained that the City corporation of to-day is the direct successor of a Roman municipality.

King Alfred realised the importance of London and the value of its situation both as a military and a commercial centre. Accordingly in A.D. 886 he repeopled London, rebuilt its walls, and founded a new city on the site of the Roman colony. He organised London as a county enclosed within walls rather than as a municipality. None of the institutions of the City shew any trace of Roman origin; they were all of the type with which we are familiar in the Saxon shires. Alfred appointed his son-in-law Ethelred ealdorman. He welcomed strangers from all parts. Saxons, Danes, Frenchmen, and Germans came to live in the new town. Trade was especially encouraged. Any member of this mixed population who fared thrice across the sea in his own ship ranked as a thane.

Under later Saxon kings the organisation of the city continued aristocratic; the king appointed the chief officer, or port-reeve as he was subsequently called; under him the government was exclusively in the hands of those who owned land within the city-walls. William the Conqueror hastened to make terms with the City of London: he wrote a "friendly" letter, which is still preserved in the archives of the City at Guildhall, to "William, Bishop, and Gosfrith, port-reeve, and all the burghers within London, French and English," promising that all should be "law-worthy" that were so in the

days of King Edward the Confessor, that every child should be his father's heir according to Saxon custom, and that he would not suffer any man to do them wrong. In all subsequent disputes between rival claimants for power in England the City of London generally was shrewd enough to choose the winning side. Hence it soon acquired privileges such as the right to hold its own courts, to elect its own bailiff or mayor, to commute its dues for a fixed sum, etc.¹

London never was in the county of Middlesex for any administrative purpose; it was always independent of the courts of that shire, which in Saxon and Danish times was very sparsely populated. But in 1101 Henry II. gave the county of Middlesex to the City "to farm," together with the right to appoint the sheriff of Middlesex, so that the county now became an appanage of the City. The City paid (and, we believe, still pays) the Crown a rent of £300 for the county; and the Mayor, commonalty, and citizens of the City of London continued to appoint the sheriff of Middlesex till the year 1888, when the right was taken from them by the Local Government Act of that year (s. 46).

The trade of London increased; so did its population; "nigh the thronged wharf, Geoffrey Chaucer's pen moved over bills of lading." But for centuries there was room for all within the ambit of the Roman walls. When it did become necessary to build houses outside the walls, the City at first incorporated its extra-mural parishes, such as Bishopsgate and Farringdon Without. The Borough of Southwark was for some purposes annexed to the City; it is still by a fiction a

¹ See *ante*, pp. 71, 72.

ward of the City—the ward of Bridge Without. But a monastery had been founded on the site now called Covent Garden, the monks of which had no wish to be included in the City boundaries. And around another monastery, specially favoured by the king, had grown up the City of Westminster. Hence the natural extension of the City of London was checked ; and its suburbs were left to be governed as though they were country villages. Their only local authority was the parish vestry. But it soon became impossible for the parishioners to assemble in the vestry ; no room indeed would hold them. It was necessary to create a representative body, called a “select vestry,” and many local Acts were passed with this object, each dealing with a separate parish. Where the parishes were small, instead of a select vestry, a District Board was formed, under which several small parishes were grouped. And so commenced that patchwork system which Mr. Chalmers so strenuously and so properly denounced. The Metropolitan select vestries and district boards have been superseded by the Metropolitan Borough Councils. While the suburbs were thus split up under a quasi-parochial government, the City proper remained a small but compact town, well organised and well governed.

It was found, however, that there must be some central authority for greater London, to deal with matters which affect more parishes than one, and accordingly in 1855 the Metropolitan Board of Works was created to control the main-drainage, to carry out improvements, to regulate the streets and bridges, and to manage the fire brigade. This Board had 46 members, but they were selected on a vicious principle. They were elected by the various vestries and

District Boards, and not by the ratepayers direct. The Metropolitan Board was abolished in 1888, and no one regretted its abolition. Its place was taken by the London County Council, which held its first meeting on March 21st, 1889, under the presidency of Lord Rosebery.

The London County Council

The London County Council consists of 118 councillors, 19 aldermen, and a chairman, who may or may not be already an alderman or a councillor. Its members therefore number in all either 137 or 138. The councillors are elected directly by the parochial electors¹—four for the City, two for each of the 57 other Parliamentary divisions of the Metropolis. They serve for three years, and then retire altogether. They elect the aldermen at the first meeting of the new Council. The aldermen serve for six years, nine or ten retiring every alternate three years. The Chairman is *ex officio* a justice of the peace for the county of London. The Council meets every Tuesday. Its twenty-six standing Committees are also busy on other days of the week with an enormous variety of business.

The London County Council has of course all the powers and duties of an ordinary County Council. But it has also succeeded to the powers, duties, and liabilities of the late Metropolitan Board of Works. These are very various in character. In the first place, the Council has very large powers of raising and borrowing money, and of sanctioning loans required by the Metropolitan Borough Councils. It has extensive powers too in connection with main-drainage, the sanctioning of local sewers,

¹ 63 & 64 Vict. c. 29.

and the prevention of floods by the Thames. It maintains and controls the Fire Brigade. It regulates nearly 4000 acres of parks and other open spaces, and all bridges and other crossings over and under the Thames, within the county but outside the City, including the free ferry at Woolwich and the new tunnel under the Thames at Blackwall which was opened by the Prince of Wales in May 1897. It also supervises all street improvements; controls the width of new streets; insists on the due observance of the building line; directs the naming and numbering and temporary closing of streets; and maintains subways under streets for gas and water mains. With the efficient assistance of its district surveyors, it deals with dangerous structures and buildings unfit for habitation, and supervises the structural arrangements of theatres, music-halls, and artisans' dwellings. It has also extensive duties in connection with cattle disease, offensive businesses, dairies and cow-sheds, explosive substances and the storage of petroleum, tramways, motor-cars, and other locomotives for roads, the testing of gas, gas-meters and electric-meters, and the constant supply of water. All county buildings, pauper lunatic asylums, reformatories, and industrial schools were transferred by the Local Government Act, 1888, from the county justices to the London County Council; and so was the power of granting licenses for music and dancing in the Metropolis (including the City), and licenses for theatres beyond the limits controlled by the Lord Chamberlain. The County Council also licenses slaughter-houses and cow-houses, and supervises common lodging-houses. It has also certain highway powers. It has purchased the tram-

ways within the county of the North Metropolitan Tramways Company, the London Tramways Company, and the London Street Tramways Company. It has also power to make by-laws for the better regulation of the county—a power which it has recently exercised with regard to lights on vehicles, unnecessary noises, and betting in the streets.

New powers are constantly being conferred on the London County Council. It is, outside the City, the local authority whose duty it is to appoint inspectors under the Shops Regulation Acts, 1892 to 1904, to enforce the Infant Life Protection Act, 1897, and to regulate overhead wires and sky-signs under a local Act passed in 1891, and the London Building Act, 1894. But the London County Council has no control over the Metropolitan Police. And no judicial powers of any kind have been transferred to it.¹ The London County Council is not a Court.

The Council is the Local Education Authority for the administrative County of London under the Education (London) Act, 1903. It also appoints delegates to serve on the Thames Conservancy Board, the Lea Conservancy Board, and many other bodies.

The expenditure of the London County Council is divided into two heads—capital outlay (*i.e.* outlay of a kind that may fairly be spread over a term of years), and annual expenditure (*e.g.* maintenance charges, salaries, interest on loans, instalment towards sinking fund, and all other recurring items). The capital outlay varies considerably in different years; for the year ending March 31st, 1903, it was £3,947,854. Stock is

¹ Local Government Act, 1888, s. 78, subs. 2.

issued from time to time to meet this outlay in accordance with the provisions of the annual Money Acts, which require the creation of a sinking fund by means of which the money borrowed will be replaced before the end of a prescribed term, which never exceeds sixty years. The London County Council can borrow money at about $2\frac{3}{4}$ per cent, including stamp duty and incidental expenses. The total amount of its stock then outstanding was £56,794,011; but a large portion of this sum is debt inherited from its predecessors, the counties of Middlesex, Surrey, and Kent, and from the Metropolitan Board of Works for main-drainage works, the Thames Embankment, and other improvements. On the other hand, the London County Council had itself lent large sums (amounting in all to upwards of £23,800,000) to the London School Board, to vestries, and other local public bodies, and on these sums it receives interest. It had other assets which reduced its net liability to about £28,000,000. The annual expenditure, on the other hand, amounted to about £5,100,000. The greater portion of this sum was raised by the county rate, which for the same year was 15d. in the £. But the Treasury contributes upwards of £500,000 from the Imperial Exchequer; the tramways bring in a profit; interest is received on the loans just mentioned; and there are rents, fees, fines, and other smaller sources of income. More than one-half of the net amount thus obtained is expended in paying interest on the debt and in repayment of the capital; the rest is spent on main-drainage work, the fire brigade, parks and open spaces, the Thames bridges, tunnel, and embankments, lunatic asylums, industrial and reformatory schools,

inspection of weights and measures, inspection of theatres and music halls, sanitary matters, and the clerical establishment at Spring Gardens.

Metropolitan Borough Councils

The London Government Act, 1899, made many valuable improvements in the machinery of the government of the Metropolis. It does not affect the City and the 113 parishes within its limits, but with that exception the whole of the administrative County of London is divided into 28 Metropolitan Boroughs which practically take the place of 127 former local authorities, namely, 73 Vestries elected under the Metropolis Management Act 1855, 12 District Boards, 1 Local Board of Health, 12 Burial Boards, 19 Boards of Library Commissioners, and 10 Boards of Baths and Washhouses Commissioners. The names of the 28 new boroughs are as follows:—Battersea, Bermondsey, Bethnal Green, Camberwell, Chelsea, Deptford, Finsbury, Fulham, Greenwich, Hackney, Hammersmith, Hampstead, Holborn, Islington, Kensington, Lambeth, Lewisham, Paddington, Poplar, St. Marylebone, St. Pancras, Shoreditch, Southwark, Stepney, Stoke Newington, Wandsworth, Westminster, and Woolwich.

The Council of each of these new boroughs is a corporation, and consists of a mayor, aldermen, and councillors. Although called a Borough Council, the provisions of the Municipal Corporation Acts apply to it only to the limited extent provided by the London Government Act, 1899. The number of councillors in the different boroughs varies from 30 to 60. The

number of aldermen is one-sixth of the number of councillors, so that the total number of aldermen and councillors in no borough exceeds 70. The mayor and aldermen are elected by the Council, the councillors by the parochial electors, *i.e.* by all persons enrolled on the Local Government and Parliamentary Registers. Every candidate for the office of councillor must be either a parochial elector of the borough, or must have resided within the borough for at least a year. A minister of religion may be a councillor ; but a woman, an infant, or an alien may not, nor any paid servant of the Council, nor any one who is interested in certain contracts with the Council, or has within twelve months been in receipt of parochial relief, or has within five years been convicted, or adjudged bankrupt, or made a composition or arrangement with his creditors. The councillors are elected on the 1st, and the mayor and aldermen on the 9th of November in each year. The mayor may be chosen out of the aldermen or councillors, or out of persons qualified to be councillors. He is by virtue of his office a justice of the peace for the County of London. One-half of the aldermen in each borough retire every three years, so that every alderman now holds office for six years. One-third of the councillors were to retire every year, unless a special resolution was passed by the Borough Council and approved by the Local Government Board, enabling the whole body of councillors to retire *en bloc* every third year. All the Metropolitan Borough Councils have passed such a resolution, and these were confirmed by an order of the Local Government Board dated June 14, 1901. The election is by ballot, and is conducted according to rules

framed by the Local Government Board. Those now in force are dated February 26, 1903.

The new Borough Councils took over all the powers, duties, property, and liabilities of the superseded Vestries and District Boards, and also of any Board of Commissioners under any of the so-called "Adoptive Acts," viz. the Baths and Washhouses Acts, 1846 to 1896, the Burial Acts, 1852 to 1900, and the Public Libraries Acts, 1892 and 1893. Each Borough Council is both the Highway Authority and the Sanitary Authority for its area. It superintends the removal of nuisances and the lighting, paving, watering, and cleansing of the streets. Minor drainage matters supplemental to the main system are also in its hands. It is also the overseer of every parish within the borough. Many additional powers have been conferred on the Borough Councils which the Vestries did not possess. Thus, the Act transferred from the London County Council to the new Borough Councils power under the London Building Act, 1894, to license the setting up of wooden structures, to remove unauthorised sky-signs and obstructions in the streets, and power under s. 28 of the Public Health (London) Act, 1891, to register dairymen. The Act moreover enables the Local Government Board, by Provisional Order, to transfer to a Borough Council, with its consent and that of the London County Council, any further power which is now capable of being exercised by the London County Council within that borough. The new Borough Councils may exercise, concurrently with the London County Council, within the borough certain other powers under the London Building Act, 1894, and the Metropolis Water Act, 1871. They may both promote and oppose

bills in Parliament. They may acquire and hold land for the purposes of their powers and duties.

The chief officer of each Metropolitan borough is its Town Clerk. He is the clerk and legal adviser of the Borough Council, and it is his duty to prepare the lists of voters and the jury lists. A large portion of the work of the Council is delegated to committees. The most important is the Finance Committee, which has practically control of the finances of the borough. A committee is not allowed to raise money by loan or rate, or spend any money beyond the sum expressly allowed for the purpose by the Council.

All payments made to and by a Borough Council are made to and by the Borough treasurer. Payments made in pursuance of an order of the Council must be signed by three members of the Finance Committee present at the meeting of the Council, and countersigned by the Town Clerk. A Borough Council may borrow money only for the purposes defined by statute, and in the manner and on the terms of repayment prescribed by statute. As a rule too the sanction of some central authority, sometimes the Treasury, but more frequently either the London County Council or the Local Government Board, must first be obtained. The outstanding debt of the Metropolitan Borough Councils in 1903 amounted to £8,759,946. All the expenses of a Borough Council are paid out of a general rate. This now includes the sewers rate and the lighting rate, which are no longer separately collected. The new general rate and the poor-rate, and, as far as is practicable, all other rates and assessments collected by the Council, are levied together on one demand note—a much-needed simplification which

saves both trouble and expense. The demand note must be in a form approved by the Local Government Board ; it must state clearly the rateable value of the premises, the rate in the pound, the period for which the rate is made, the several purposes for which it is made, and the approximate amount in the pound required for each purpose, etc. The accounts of each Council and of any committee appointed by the Council, and of its officers, must be audited annually by District Auditors appointed by the Local Government Board. This is an independent and a searching inquiry, conducted in the manner described in chapter v. Every ratepayer and every owner of property in the borough is entitled to be present and to raise any objection to the accounts. After the audit a full abstract of the accounts for the year must be printed. Any ratepayer of the borough may inspect this printed abstract, and can buy a copy for a reasonable price. A copy must be sent to the Local Government Board.

Enough has probably been said to satisfy the reader that the London Government Act, 1899, was a well-drafted and useful measure. It simplified and improved the machinery of local government in London ; it consolidated the bodies, formerly far too numerous, which controlled that machinery ; it concentrated their powers and gave dignity and importance to their work. It has even caused Londoners at last to take some active interest in the management of their own local affairs.

The City of London

The Corporation of the City of London is still, for nearly all purposes, except main-drainage, the sole local authority within its area. It is subject to no external control or audit. It enjoys complete independence, except in the few matters in which the London County Council has jurisdiction within the limits of the City. No one can deny the efficiency of its government within those narrow limits. The City has its own police and its own courts. It is the sanitary authority for the port of London. It is also a poor-law union. It has the monopoly of all markets within seven miles of its boundary. It is paid a duty on all corn brought into the port of London or the Metropolitan area.

The Corporation exercises its functions through three assemblies—namely, the Court of Aldermen, the Court of Common Council, and the Court of Common Hall. The Lord Mayor is president of each of these assemblies.

The Court of Aldermen consists of twenty-six aldermen, including the Lord Mayor. The City is divided into twenty-six wards. There are twenty-four wards which each elect an alderman; two more wards elect an alderman between them; the remaining alderman sits for a twenty-seventh nominal ward, that of Bridge Without, and the vacancy is usually bestowed on the senior alderman. The aldermen hold office for life, are *ex officio* magistrates, and when sitting alone have the powers of ordinary justices sitting in petty sessions. The Court of Aldermen licenses brokers and elects the Recorder, who is a judge of the Central Criminal

Court and also chief judge of the Mayor's Court, which has an unlimited civil jurisdiction within the limits of the City. But he cannot act as a judge till he is approved by the Crown.

The Court of Common Council is the main legislative and executive body. By virtue of s. 41 of the Local Government Act, 1888, it is to be "deemed to be" an Urban District Council. It consists of the 26 aldermen and 206 common councilmen elected annually in different proportions by the several wards. The electors at the ward-mote elections need not be citizens, but must have a certain property qualification in the City. The Court of Common Council elects the Town Clerk, the City Remembrancer, the City Coroner, and the Secondary, or under-sheriff. It formerly also elected the Common Serjeant and the Judge of the City of London Court; but the right to elect these officers was taken from it by the Local Government Act of 1888. By a private Act (60 & 61 Vict. c. cxxxiii.) which came into operation on Plough Monday (January 10th) 1898, the Court of Common Council took over all the powers and duties of the former Commission of Sewers, which had for more than 200 years superintended the paving and lighting and managed the streets of the City.

The Court of Common Hall consists of the Mayor, sheriffs, aldermen, and all the liverymen of the several companies of the City of London, who number about 9000. This body meets only twice a year, on June 24th and September 29th; on the later date it nominates two aldermen—usually the two senior aldermen who have not passed the Chair—for the office

of Lord Mayor. On the same day it elects the Sheriffs, the Chamberlain (or City Treasurer), and other corporate officers. The election of Sheriffs is subject to the approval of the Crown.

The Lord Mayor is chosen from among the aldermen who have served the office of sheriff. Of the two aldermen named by the Court of Common Hall on September 29th in each year, the Court of Aldermen selects one, (usually the senior one), who is sworn in as Lord Mayor and presented to the Lord Chancellor on the following November 8th, and to the judges of the King's Bench Division on November 9th. The Lord Mayor is the lord-lieutenant and chief magistrate and coroner for the City, and admiral of the port of London. He is expected to take the lead in all City functions and other matters of public interest. During his year of office he lives at the Mansion House, and there dispenses hospitality on behalf of the City. His salary for the year is £10,000; but he invariably spends more than this amount.

The citizenship of London was formerly confined to the members of the livery companies. Any member of any of these companies could take up his freedom and be enrolled as a citizen. Now, however, any ratepayer within the City, or any one on the parliamentary register for the City, may on personal application at the Chamberlain's Court, Guildhall, and on payment of one guinea, become a freeman of the City of London.

The debt of the City is small. The outstanding loans of the Corporation in 1903 amounted to £6,285,502.

The Local Education Authority

The whole of the administrative County of London—including the City—is for the purposes of both higher and elementary education under the jurisdiction of one Local Education Authority, which is now the London County Council. See *ante*, chap. vii. The London School Board was abolished in 1903, at which date its debt amounted to £11,052,799.

The London County Council is also the local authority under the Industrial Schools Acts. The Council had under its control, in 1904, industrial schools at Feltham and Mayford, the “Shaftesbury” training ship on the Thames (which has since been closed); two truant schools at Highbury and Hackney; three Day Industrial Schools in Drury Lane, Brunswick Road, Poplar, and Ponton Road, Nine Elms; a school for girls at Gordon House, Isleworth, and in association with the Brighton Authority a boarding school at Portslade; it also sends children to various other parts of the country. Between the years 1871 and 1905, 34,002 children were sent to Industrial schools from the district of the London County Council.

Metropolitan Poor-Law Authorities

The Metropolis is divided into 30 unions, of which the City is one. The guardians are elected by the same electors as the Metropolitan Borough Councils. They hold office for three years. The Local Government Board used formerly to nominate a certain number of guardians for each of the Metropolitan unions; but this arrangement ceased in 1894. A fund, called the

Common Poor Fund, was created in 1867, to which the wealthier unions, including the City, contribute for the benefit of the poorer Metropolitan unions. The Local Government Board assesses the amount that each union or union-parish is to contribute to this fund according to the parish valuation-lists. The money thus collected is used to defray the cost of the maintenance of pauper lunatics, the provision and maintenance of hospitals for patients suffering from fever and smallpox, the salaries of persons employed in dispensaries, vaccination, and the registration of births and deaths, in all the Metropolitan unions.

The construction and management of asylums for imbecile or insane paupers, and hospitals for infectious cases, have been taken out of the hands of the ordinary guardians and vested in a corporate body called the Metropolitan Asylums Managers. The number of managers is fixed by the Local Government Board. The present number is 74. Of these 18 are nominated by the Local Government Board; the remaining 56 are elected by the guardians of the several unions, including the City, either from among themselves or from the ratepayers of the union. The nominated members must be either justices of the peace or ratepayers resident in the asylums district; they must never exceed in number one-third of the elective members. The managers had at one time five hospitals for infectious diseases. But the result of massing large numbers of smallpox cases together was undoubtedly to spread the disease in the immediate vicinity of the hospitals. Now cases of smallpox are treated on board hospital ships moored in the river Thames off Dartford; and as soon as the

patients are convalescent, they are removed to Gore Farm, Darenth. By a curious anomaly the provision of hospitals for infectious disease is considered a poor-law, and not a sanitary, matter, and the whole management of these institutions is conducted without any reference to the sanitary authorities. The Metropolitan Asylums Managers have not (as their name might lead one to suppose) any share in the control or management of the non-pauper lunatic asylums of the Metropolis. There are nine of these : Hanwell, Colney Hatch, Banstead, Canehill, Claybury, Bexley, Horton, Manor (Epsom), and Epileptic Colony (Ewell) ; another is in course of erection at Long Grove, Epsom ; these are all managed by the Asylums Committee of the London County Council.

Other London Authorities

Having briefly described the principal local authorities in the Metropolis, it may be well to mention some exceptions to their jurisdiction. National buildings and most of the public parks are under the control of the Office of Works, a State department consisting of a permanent staff and a Parliamentary Chief Commissioner, who is appointed by the Government of the day, and goes out with his party. The London County Council has no jurisdiction over structures erected in certain liberties, such as the Temple or the Close of Westminster Abbey. The Lord High Steward appoints a special coroner for the Royal Palaces. For police purposes London is divided into two distinct areas, the City and the Metropolitan Police District. Each has its separate police force. The Metropolitan Police

District is a very large area, nearly six times the size of the county of London; and the force, which consists of about 16,520 men, is under the direct control of the Home Secretary, and wholly independent of the London County Council. The City Police Force numbers 1064 men; it is under the control of the Police Committee of the Common Council. The theatres in certain parts of London are licensed by, and are under the control of, the Lord Chamberlain. Public-house licenses remain in the hands of the county justices or city magistrates, as the case may be. The Metropolis Water Act, 1902 (2 Edw. VII. c. 41), established a Water Board to manage the supply of water within London and certain adjoining districts. The Act transferred to the Water Board the undertakings of the Metropolitan Water Companies. The supply of gas for the most part is still in the hands of private companies with special statutory powers.

There are many minor authorities (such, for instance, as the Thames Conservancy Board, etc.) which ought to be described in order to give anything like a complete account of London government. That, however, is beyond the scope of this chapter.

CHAPTER XII

CENTRAL CONTROL

Local Self-government—Necessity for Central Control—The Board of Trade—The Board of Agriculture and Fisheries—The Board of Education—The Local Government Board—Its Functions—Advice—Administrative Control—Financial Control—Audit—Limits of Central Control.

So far we have dealt with matters of purely local government. We have watched the rise of the parish and seen it gradually supersede the Saxon township, the Norman vill, and the feudal manor. We have traced the development of the borough from a few houses clustering under the shelter of a baron's castle or a bishop's palace, till it rises into an organised municipality, such as Birmingham or Leeds. We have studied the powers and duties of the modern statutory authorities, such as the Board of Guardians, the District Council, and the County Council. A few words must be added to give the reader some idea of the extent to which these efficient local bodies are supervised and controlled by a Central Executive, and of the nature and incidence of such control.

But there at once arises the previous question: "Why should there be any Central Executive in local affairs? What need is there of any control from headquarters?" The principle of local self-government is dear to every Englishman; for he knows how large a share it has had in developing the national character, and in securing to us the liberties which we possess. That principle pervades and underlies our whole history as a nation. Local government is at once the oldest and the youngest branch of our political system. Township, hundred, and shire date back to the days of King Alfred. Twenty years ago the Councils which now govern their modern equivalents, the parish, the district, and the county, did not exist. Or take the parish meeting as an instance. It is an institution hundreds of years older than either the House of Lords or the House of Commons, although it has only received in 1894 its full recognition at the hands of Parliament. This parish meeting was the cradle in which our liberties were nursed. It was the school in which our forefathers learnt those lessons of self-control, self-help, and self-reliance which have made the English nation what it is. Slowly and gradually they learnt them, but by such lessons alone does a nation rise to a true conception of the meaning of liberty and the methods of self-government.

Nevertheless, experience has proved that it is necessary to have in addition a central authority—not to do the work, or take the responsibility which belongs to the local executive, but to keep it everywhere in action; to develop and strengthen it; to give advice, when asked; to volunteer it, where it seems to be required;

and in some cases even to compel the local authority to do its duty. The independence of the local administrative councils is not diminished, but rather invigorated, by the existence of an efficient central body, which can guide and superintend their various activities, and aid them with higher and wider knowledge than is available in the district.

At the same time, the extent to which the Central Government should exercise administrative control is a difficult problem. It should not unduly interfere in individual cases. Nor should all England be treated as though it were a suburb of London. No doubt, whenever an intelligent and conscientious central department, armed with large executive powers, sees things going wrong in a certain district, there is a strong temptation for it to step in and set them right with a strong hand. But local bodies should be allowed even to mismanage their own affairs to some extent; only thus can they acquire the necessary experience and learn the necessary lessons. They must not be kept too long "in leading strings." A child that is learning to walk must have some tumbles. Local self-government is worth having, even at the cost of a few initial blunders.

At present, however, no one can fairly accuse our central departments of that "*fureur de gouverner*" which M. Mirabeau l'Ainé denounces as "*la plus funeste maladie des gouvernements modernes.*" They largely temper power with discretion, and encourage everything which can give vigour and colour to local life. They have latterly shown a marked disposition to transfer to important local bodies, like the County Council, jurisdiction over lesser authorities in the county, particularly

in matters which require an intimate acquaintance with the locality, and can therefore be best disposed of on the spot.

In England the supervision of the Central Government over local authorities is mainly exercised through four departments:—the Board of Trade, the Board of Agriculture and Fisheries, the Board of Education, and the Local Government Board. Local Education Authorities, as regards all matters relating to education, are under the control of the Board of Education, while financially they are under the Local Government Board. Industrial schools are under the care of the Home Office. The sanction of the Treasury is required for loans for certain local purposes. But the general superintendence and control of local affairs is mainly in the hands of the Local Government Board.

The Board of Trade

The first effort in the direction of central control in England was purely tentative. During the greater part of the eighteenth century there had existed a "Council for Trade and Plantations," whose duty was merely to advise the Government on commercial and other kindred topics. In 1786 a committee of the Privy Council was appointed by an Order in Council to take the place of this council, and this committee subsequently came to be called the Board of Trade. It was not till 1862 that it was so entitled in an Act of Parliament. On this body very large administrative powers have gradually been conferred. It has a

President, a Parliamentary Secretary, and a permanent staff. It deals with a vast number of most important matters—such as bankruptcy, companies, copyright, trade-marks, charters, harbours, railways, canals, and electric lighting. It regulates light railways. Licenses to local authorities under the Electric Lighting Acts, 1882 and 1888, are still granted by the Board of Trade.

The Board of Agriculture and Fisheries

On the passing of the Tithe Act, in 1836, a body of commissioners was appointed to carry the Act into execution. In 1841, when the Copyhold Act was passed, its administration was entrusted to the same commissioners, who, when acting under the new Act, were called the Copyhold Commissioners. Four years later the Enclosure Act of 1845 was passed, and under its provisions Enclosure Commissioners were appointed, who were distinct from the Tithe and Copyhold Commissioners. The Land Drainage Act, passed in the following year, was also to be administered by the Enclosure Commissioners. In the year 1851 these two bodies of commissioners were merged into one by the 14 & 15 Vict. c. 53, and a single department was formed, presided over by officials who were styled Tithe, Copyhold, or Enclosure Commissioners according to the functions which they happened to be exercising at the moment. This arrangement existed for upwards of thirty years, until, on the passing of the Settled Land Act in 1882, the former titles disappeared, and the commissioners were thenceforth known as the Land Commissioners for England. Finally, by the Board

of Agriculture Act, 1889, a new body was created, called the Board of Agriculture, in which the Land Commission was merged; and the title of Land Commissioners was abolished.

To this new body were transferred, in the first place, all the powers and duties of the Land Commissioners (which were most various and important, for they comprised all the work done formerly by the Tithe, the Copyhold, and the Enclosure Commissioners), all the powers and duties of the Privy Council under the Destructive Insects Act, 1877, and the Contagious Diseases (Animals) Acts, and all the powers and duties of the Commissioners of Works and Public Buildings in connection with the Ordnance Survey of Great Britain, Ireland, and the Isle of Man. By the same Board of Agriculture Act, 1889, power was given to the Board to make general or special orders for prescribing and regulating the muzzling of dogs, and the seizure, detention, and disposal (and, if need be, the slaughter) of stray dogs, and of dogs not muzzled or not under control. By subsequent legislation all the duties of the Board of Trade under the Corn Returns Act, 1882, and many other miscellaneous duties, have been imposed on the Board of Agriculture. By the Law of Commons Amendment Act, 1893, s. 2, it is provided that no enclosure or improvement of any part of a common purporting to be made under either the Statute of Merton or the Statute of Westminster the second, shall be valid, unless it is made with the consent of the Board of Agriculture. Under the Commons Act, 1899, the Board of Agriculture may approve schemes submitted by District Councils for the regulation of

commons. They may appoint arbitrators and prescribe forms for proceedings in arbitrations under the Agricultural Holdings Act, 1900. The Improvement of Land Act, 1899, imposes duties on the Board in connection with proceedings for the improvement of land. The Board may take proceedings in certain cases under the Sale of Food and Drugs Acts, 1875 to 1899, and may make regulations under the 1899 Act as to the analysis of milk, cream, butter, or cheese. By the Board of Agriculture and Fisheries Act, 1903, important powers and duties of the Board of Trade in relation to fisheries were transferred to the Board of Agriculture, whose title was then altered to the Board of Agriculture and Fisheries.

The Board of Education

In the month of March 1900 a Board of Education was established by the Board of Education Act, 1899, charged with the superintendence of matters relating to education in England and Wales. The Board consists of a President, appointed by His Majesty, the Lord President of the Privy Council, His Majesty's Principal Secretaries of State, the First Commissioner of the Treasury, and the Chancellor of the Exchequer. The President of the Board is entitled to a salary, and the Board may, with the sanction of the Treasury, appoint secretaries, officers, and servants, with salaries or remuneration. The Board has an official seal. The President or Secretary may sit in Parliament. The Board takes the place of the Education Department of the Privy Council, including the Department of Science and Art, and all enactments and documents are to be

construed accordingly. By Orders in Council certain powers of the Charity Commissioners and of the Board of Agriculture relating to matters of education have been transferred and made exercisable by the Board of Education. Power, moreover, is given to the Board to inspect any school supplying secondary education and desiring to be inspected for the purpose of ascertaining the character of the teaching in the school, and the nature of the provisions made for the teaching and health of the scholars. The Council of any county or county borough may contribute to the cost of such inspection of schools within the county or borough. The schools established by scheme under the Welsh Intermediate Education Act, 1889, will continue to be inspected, if desired, by the Central Welsh Board for Intermediate Education. His Majesty in Council was empowered by the Board of Education Act, 1899, to appoint, and has appointed, a consultative committee, including persons qualified to represent the views of universities and other bodies interested in education, to advise and assist the Board.

The Local Government Board

One of the first tasks attempted by our reformed Parliament was the entire remodelling of the then poor-law system. A central body of commissioners, with very large powers, was constituted by the Poor-Law Amendment Act of 1834, which was subsequently made permanent under the title of the Poor Law Board. The Public Health Act, 1848, created a General Board of Health, the members of which were appointed by the Crown; they were empowered to appoint inspectors to see that the provisions of the Act were carried out. That Board was allowed to expire, and its remaining functions were divided between the Home Office and the Privy Council. Thus, in 1871, such central supervision as existed was divided among various departments of State which had no organised or necessary communication with each other. There was a Local Government Act Department of the Home Office to which many general questions of local government were referred; the Privy Council dealt with measures for the prevention of disease; the Poor Law Board controlled the Boards of Guardians; other matters came before the Board of Trade. There was no sufficient staff of inspectors or other officers; no concentration; no constant and official communication between central and local officers throughout the kingdom. A Royal Sanitary Commission was appointed in 1869, which strongly deprecated the existing inefficiency and uncertainty of the central sanitary authority, and urged the necessity of a new statute to "constitute and give adequate strength to one central authority."

The Commissioners say in their report: "There should be one recognised and sufficiently powerful minister, not to centralise administration, but, on the contrary, to set local life in motion—a real motive power, and an authority to be referred to for guidance and assistance by all the sanitary authorities for local government throughout the country. Great is the *vis inertiae* to be overcome; the repugnance to self-taxation; the practical distrust of science; and the number of persons interested in offending against sanitary laws, even amongst those who must constitute chiefly the local authorities to enforce them."

The recommendations contained in this report were carried into effect by the Local Government Board Act, 1871 (34 & 35 Vict. c. 70). The preamble of this Act recites that "it is expedient to concentrate in one department of the Government the supervision of the laws relating to public health, the relief of the poor, and local government." It then proceeds to constitute the Local Government Board, to consist of a President, and the following *ex officio* members—the Lord President of the Council, all the Secretaries of State, the Lord Privy Seal, and the Chancellor of the Exchequer. The President is paid a salary of £2000 a year; the *ex officio* members are unpaid. The President and one of the secretaries to the Board may sit in Parliament, and as a fact the President has always been a Cabinet Minister. The whole Board seldom or never meets. Questions of national importance of course come before the Cabinet. The President and the Department do all the work. The Act seems to contemplate this, for it provides that the Local Government Board may

adopt an official seal and style, and that any act to be done or instrument to be executed may be done or executed in the name of the Board by the President or by a Secretary or Assistant-Secretary, authorised so to do by any general order of the Board. In addition to the ordinary staff of a Government Office, the Board has attached to it a staff of medical inspectors, architects, and engineers, who conduct local investigations of a scientific or technical nature.

The Act of 1871 vested in the new Board—(1) All the powers and duties of the Poor-Law Board; (2) all the powers and duties of the Privy Council relating to vaccination and the prevention of disease; (3) all the powers and duties of the Home Office in relation to public health, drainage and sanitary matters, baths and washhouses, public and town improvements, artisans' and labourers' dwellings, local government, local returns, and local taxation. But since that date very many statutes have been passed which have added enormously to the duties of the Local Government Board. We may mention especially the Public Health Act 1875, the Local Government Acts of 1888 and 1894, the Public Health Acts Amendment Act 1890, the Agricultural Rates Act 1896, the London Government Act 1899, the Motor Car Act 1903, and the Unemployed Workmen Act 1905. Indeed, it is seldom that a year passes without some new power being conferred, or some new duty being imposed, or some amendment being made in the procedure of the Board. To a large extent this legislation is suggested by the permanent officers of the Board,

who know better than any one else where the machinery does not work quite smoothly, and how to proceed to remedy the defect. \ But it is high time that all these minute provisions, which are scattered broadcast over the Statute Book, should be collected into one "Local Government Code." \

It is impossible for me in this short chapter to convey to the mind of the reader more than an elementary notion of the infinite variety and complexity of the work of the Local Government Board. Roughly, that work may be grouped under five heads :—

1. Legislative Powers.
2. Advice.
3. Returns.
4. Administrative Control.
5. Financial Control.

1. *Legislative Powers*

The Local Government Board has large legislative powers. Its orders, rules, and regulations have in many cases the force and effect of a statute. In poor-law matters the Board may make either a general order binding on all unions, or a "general rule" affecting several unions, or a "single rule" affecting one union only. But it has no power to interfere in any individual case for the purpose of ordering relief. Moreover, this legislative power of the Board in poor-law matters is subject to a threefold control. In the first place, a copy of every general rule, order, or regulation issued by it must be laid before both Houses of Parliament as soon as practicable after its publication. Secondly, the King

may, by the advice of his Privy Council, disallow a general rule, or any part of it, which will then cease to be of any further force or validity. Lastly, there is a power, little known and seldom, if ever, exercised, to bring any rule, order, or regulation of the Board before a court of law and have it declared illegal or *ultra vires*. No rule, order, or regulation of the Board comes into operation until fourteen days after it has, if a general order, been published in the *London Gazette* or, if a rule, sent to the overseers of the parish and the guardians of the union concerned ; though it may be acted on within the fourteen days. But at any time within a year after it has been so published, any person aggrieved may apply to the High Court of Justice to have the rule, order, or regulation removed by *certiorari* into the High Court, with a view to its being quashed. Till it is quashed, however, the rule remains in force, in spite of the application. Notice of the application must be left at the office of the Board at least ten days before the motion is made ; and the applicant must give security for the costs of the Board, in case the application fails. If, however, it succeeds, the Board must at once give notice to all unions, parishes, or places affected that the rule has been declared illegal or *ultra vires*.

Again, the Board has power to make regulations and issue directions for the Prevention of Disease under the Public Health Act, 1875, and subsequent statutes. It has also made many most valuable regulations under the Canal Boats Acts, 1877 and 1884, with the object of securing that adequate accommodation is provided for persons who live on board canal-boats, and that due attention is paid to sanitation. Moreover,

the Board can, by Provisional Order, alter, amend, or repeal local sanitary Acts. These Provisional Orders, it is true, require confirmation by Parliament, but that is usually obtained as a matter of course.

In addition to its own power of direct legislation, the Board also performs the important duty of revising and amending by-laws made by other bodies. All by-laws made by any local authority under the Public Health Act, 1875, or the Highways and Locomotives Amendment Act, 1878, must be submitted to the Board, which supervises, and may alter or disallow them, wholly or in part. So too, with a few exceptions, no by-law made as to markets, or as to slaughter-houses, or other offensive trades in the Metropolis, or as to hackney carriages and public bathing, will be of any validity until it has been confirmed by the Board. It is very necessary that such by-laws should be submitted to some central authority for revision and confirmation, as local councils sometimes take strange views as to the extent of their powers. The following by-laws, for instance, were passed by an urban sanitary authority, and subsequently disallowed by the Board :—a by-law prohibiting all persons from singing hymns in the street, a by-law forbidding strangers to bring dogs into the town, and a by-law forbidding “lounging” on Sunday afternoon!

2. *Advice*

Every local authority is entitled to the advice of the Board, whenever it is in any difficulty, even though such difficulty be of its own creation. And the local

authorities very freely avail themselves of this privilege. The Board thus indirectly superintends innumerable local matters; questions of the most varied character are constantly referred to Whitehall. Whether the question relates to a cemetery or to the water-supply, to the erection of a hospital or the misconduct of the master of a workhouse, it is the duty of the Board to consider the reports of the various local officers, and to advise the local authority thereon. Sometimes it is necessary to send down an inspector to hold a local inquiry and report on the matter before the Board gives its opinion.

The value of the information thus acquired and of the advice thus given by the Board, cannot be exaggerated. "Power," says Mr. J. S. Mill, "may be localised, but knowledge to be most useful must be centralised." Unfortunately, the Board can seldom secure that its advice will be accepted and acted on. The Board has power to apply to the High Court for a *mandamus*, under section 299 of the Public Health Act, 1875, to compel a defaulting local authority to perform its duty; but it only takes this step in extreme cases.

It is also the duty of the Board from time to time to hold inquiries into outbreaks of disease in any place (such as the recent epidemic of typhoid fever at Maidstone), and into any other matter affecting the public health; and it has power to charge the expenses of such inquiries on the rates of the locality concerned. These investigations are conducted by medical men of high scientific attainments; and the reports they send in not only enable the Board to advise the local authority which has raised the question, but are also

of great scientific value. The Board has thus accumulated a mass of experience which has largely contributed towards the solution of many difficult problems of sanitary science. It further has power to direct and pay for special researches into any medical question bearing upon its duties.

Another important and little known function of the Board is that of advising the Government on local Acts. It has to report specially on every private bill that relates to local matters. An enormous number of interests is affected by what is called private bill legislation; and many matters of vital importance, such as powers to make by-laws or to borrow money, pass unobserved in private bills which would be made the subject of active opposition if they were contained in public bills. It is the duty of the Board to examine these measures and to report specially upon them.

3. *Returns*

In order that the Board may be able to offer efficient advice to the various local authorities who may consult it, it is essential that it should have the fullest information. Hence large powers have been conferred on it of demanding reports and returns of every sort and kind from local sources. Every year there is poured into its various departments an immense stream of statistics, which it is the duty of the Board to collate and digest. The clerk to every vestry, board, or corporation, and to every body of justices, commissioners, inspectors, trustees, etc., which is authorised to levy or to order to be levied any compulsory rate, tax, toll, or

due, must make an annual return to the Board, showing how much has been received, and how it has been expended. The Board may also require any return to be made to it, which under some previous Act had to be made to any other public department. Whenever the accounts and receipts of a local authority are audited by a District Auditor, he sends to the Board a duplicate of the financial statement of that authority, stamped and certified by himself. Special provision is made in the Municipal Corporations Act, 1882, with regard to returns from municipal corporations.

Furthermore, the Board is itself required to lay an annual report of its work before Parliament, and also an abstract of all returns made to it under the Local Taxation Returns Acts, 1860 and 1877. As a matter of fact, the Annual Report and its exhaustive Appendix are by no means confined to matters as to which returns are made to the Board, but deal with every branch of local government, detailing the steps taken by the Board in working its multitude of statutes. The statistics thus collected from the whole country are most valuable ; in some cases almost alarming ! The correspondence which is constantly passing between local officials and the Board enables the central authority to lay its finger upon the defects of local administration, and its Annual Report furnishes Parliament with the information necessary to enable it to remedy these defects by legislation. A most interesting and instructive blue-book is this Annual Report.

4. *Administrative Control.*

The administrative control exercised by the Board over different local authorities varies considerably, as we have already seen. Over municipal boroughs the Board has no direct control, unless the Borough Council is acting as an Urban Sanitary Authority. It is only when a borough wants to borrow money that the Board can step in and impose conditions. Over District Councils the Board has considerable power; it can, in extreme cases, force them to carry out sanitary measures to its satisfaction; for instance, it can compel them to provide a cemetery when one is urgently needed. It can authorise them by Provisional Order to acquire any necessary land by compulsory purchase. It can in like manner rearrange county districts, or alter their boundaries. In all poor-law matters the Board has complete control. It has power to create, dissolve, and amalgamate unions, and to regulate the proceedings of the guardians in the minutest particulars. No officer of a union (as distinct from a menial servant) can be appointed by the guardians without the sanction of the Board, and when once appointed such an officer cannot be dismissed by the guardians without the consent of the Board; though he may be dismissed by the Board without consulting the guardians. The Board takes a most paternal interest in all the proceedings of the guardians—possibly too paternal an interest. As soon as the principles which should govern the relief of the poor and the management of workhouses are better understood and generally accepted, Boards of Guardians will, no doubt, be allowed a freer hand.

In addition to its supervisory duties, the Board has

also much direct administrative work. Thus, it has important powers under the Rivers Pollution Prevention Act, 1876. Section 3 of this Act made it an offence, which can be restrained by the summary order of a County Court judge, for any person to cause or knowingly to permit any solid or liquid sewage matter to fall or flow into any stream. It was feared that this provision would press severely on sanitary authorities, too many of whom were then and are still in the habit of thus disposing of the sewage of their locality; it was felt that time must be given to such sanitary authorities to find other means of disposing of their sewage, or of rendering the sewage matter harmless. It was therefore provided that if it appears to the Board, after local inquiry, that further time should be granted to any sanitary authority which was discharging sewage matter into a stream, the Board may by order suspend the operation of section 3 of the Act for a fixed period, and subject to any conditions they please, so as to protect the sanitary authority from any proceedings which might otherwise be brought against it under that section for polluting the stream. Moreover, no proceedings can be taken against any person under sections 4 and 5 of the Act, except by a sanitary authority; and that authority must first obtain the consent of the Board to its instituting such proceedings. But if a sanitary authority, on application from a person interested, refuses to take proceedings or to apply for the Board's consent, the Board may, on the application of that person to them, and after inquiry, direct the sanitary authority to take proceedings. The Board is also empowered by section 12 to appoint an inspector

for the purpose of granting certificates to the effect that the means used for rendering harmless any sewage matter or other pollution falling or flowing into any stream, are the best or only practicable and available means under the circumstances of the case. If such a certificate be given, it is for two years at least conclusive evidence in favour of the person accused of polluting the stream. But any person aggrieved by the granting or withholding of such a certificate may appeal to the Board, which has power to confirm, reverse, or modify the inspector's certificate, and also to make an order as to the payment of the costs of the appeal.

The Board has many other miscellaneous duties. It is required by the Canal Boats Acts, 1877 and 1884, to make provision for the inspection of canal-boats, and the education of the children dwelling on board them. To it have been transferred the powers conferred on the Board of Trade by the Metropolis Water Acts 1852 and 1871. If a local authority sanctions the use of a steam-whistle or "hooter," there is an appeal to the Board, which has power under the Factories (Steam Whistles) Act, 1872, to revoke the sanction. It may be called upon to sanction the sale by a parish of its land; or to rearrange the boundaries of parishes under the Divided Parishes Acts, 1876 to 1882. It may be required to issue instructions to the Office of the Registrar-General as to the registration of births and deaths. It has also important powers under the Baths and Washhouses Acts, 1846 to 1899; under the Union Assessment Acts, 1862 to 1880, and the Valuation of the Metropolis Act, 1869; under the Housing of the Working Classes Acts, 1890 to 1900; under the Local Loans Act, 1875, and

the Public Works Loans Acts, 1875 to 1901 ; under the Alkali Acts, 1881 and 1892 ; under the Motor Car Acts, 1896 and 1903 ; and under the Unemployed Workmen Act, 1905.

Then, again, the Board has special powers under the Vaccination Acts, 1867 to 1898. It makes special grants to public vaccinators who attain a high standard of efficiency. It supplies calf-lymph to the vaccinators in order to meet the views of those who object to humanised lymph. Of the 940,509 children registered as born in 1902, 703,721 were successfully vaccinated, 90,826 died unvaccinated ; 27 cases remained unvaccinated, having had small-pox ; 3027 cases were certified as "insusceptible," and in respect of 33,759, or nearly 3·6 per cent of the whole, certificates of conscientious objection were received ; in other cases, amounting to 1·3 per cent, vaccination was postponed on account of the children's state of health. The proportion not coming within any of the above classes amounted to 10·3 per cent of the whole.¹ The Board has also stringent powers to deal with any kind of epidemic ; in such a case it may provide for the speedy interment of the dead, and house-to-house visitation, and make many other necessary arrangements.

It is further the duty of the Board to see that the provisions of the Adulteration Acts are carried out. It has to keep the local authorities up to the mark. This formerly was a difficult task, especially in the case of the smaller boroughs. "In one case a Town Council at first refused to have samples analysed, saying they

¹ *Thirty-fourth Annual Report of the Local Government Board*, p. clxxxi.

had received no complaints, but afterwards, on our insistence, decided to make the experiment. The result was that no less than three out of four of the samples examined during the quarter were found to be adulterated.”¹ Under the Sale of Food and Drugs Acts, 1875 to 1899, including the Margarine Act, 1887, the Board has power to compel local authorities to appoint analysts, if they do not do so of their own accord. The Board has used all its influence to induce the local authorities to take this simple precaution against adulteration. As late as 1891 it appeared that in twenty-two counties, nineteen of our largest towns, and two metropolitan districts, the Sale of Food and Drugs Acts were practically inoperative. Analysts have, however, now been appointed in most, if not all, these places, and with very satisfactory results. The beneficial effect of this legislation is shown by the statistics which have been received and tabulated by the Board. In 1877, 14,706 samples were analysed in England, and of these 19·2 per cent were condemned. In the five years 1877-1881 the proportion reported against was 16·2 per cent. In the next five years 1882-1886 the percentage of adulterated samples fell to 13·9. In 1887-1891 it was 11·7 per cent; while in the five years 1892-1896 it was reduced to 10·6 per cent. In the years 1895, 1896, and 1897 the proportion of adulterated samples fell to a little over 9 per cent. In 1904 the percentage was 8·5 per cent. The total number of analyses made during the year 1904 under these Acts was 84,678, or one to every 384 of the population. Adulteration was discovered in 7173 cases, and 3707

¹ *Eleventh Report of the Local Government Board*, p. xcix.

prosecutions were instituted. Or take a particular article, such as milk, the adulteration of which was treated in our boyhood more as a joke than as a crime. Of the specimens of milk analysed in 1882, 19 per cent were found to be adulterated. In some cases as much as 60 per cent of water was found to be added. The analyst for Woolwich remarked that the inhabitants must be paying "some thousand pounds a year under the name of milkmen's bills, but really as an additional water rate."¹ The analyst for Essex complained that the milk was not even adulterated with pure water, but that the compound "is eminently favourable for the development of disease germs." In 1904, 36,413 samples of milk were analysed, of which 4031, or 11·1 per cent, were condemned.

5. *Financial Control*

The Board controls the financial engagements and the expenditure of local bodies in two ways:—

(a) In most cases, before any local authority can borrow money, it must obtain the sanction of the Board.

(b) The Board subjects the accounts of most local authorities to a searching audit.

(a) *Loans*.—Almost all loans for local public works (except piers and harbours) must be sanctioned by the Board, unless they are authorised by special Act of Parliament. Thus the Board sanctions loans for the construction, widening, paving, flagging, and channelling of streets; for the erection of offices, public baths and washhouses, bridges, gas-works, markets, hospitals, and

¹ *Eleventh Report*, p. ciii.

defences against the sea ; for the provision of pleasure grounds, cemeteries, slaughter-houses, manure depots, and works for the removal of night-soil and for the destruction of refuse. The purposes for which the money is to be borrowed are strictly scrutinised ; plans and detailed estimates of the proposed works must be furnished ; and before any loan is sanctioned, the Board must be satisfied that the works are necessary and suitable to the locality, and that the estimates are not excessive. The Board will also see that the money borrowed is properly applied. The dates and terms of repayment, the due payment of interest, the issue of debentures, etc., are in many cases regulated by the Local Loans Act, 1875. It is unfortunate, however, that the control of the Board over such loans is not complete. A local authority can always evade the scrutiny of the Board by applying to Parliament direct ; and a private bill often slips through without receiving that severe examination which it would encounter at Whitehall. During the period of twenty-five years ending in July 1897, various local bodies, without the sanction of the Board, obtained special Acts, under which they borrowed no less a sum than £71,858,843.

(b) *Audit*.—The Board is also charged with the duty of auditing the accounts of most local authorities. For purposes of audit the country, exclusive of the Metropolis, is mapped out into thirty-three districts, under the District Auditors Act, 1879 ; and the Board appoints officers, called District Auditors, who, under its direction, audit on the spot the accounts of every Board of Guardians, County Council, District Council, Parish Council, and Parish Meeting, and also the accounts of

all overseers of the poor. When in 1879 highway accounts were first brought under the audit, some curious applications of the rates came to light. In one parish a sparrow-shooting club for the farmers had for five-and-twenty years been supported by the highway rate. In another parish the mole-catchers' bills were paid out of the same source, the explanation being given that "having no other available source from which to pay the above, we paid it from the surveyor's account."¹ And although in most parts of rural England vulpicide and infanticide are regarded as crimes of about equal magnitude, two or three cases were discovered in which rewards for killing foxes were paid out of the rates. Among other items of disallowed expenditure we find champagne and plovers' eggs, visits to the theatre, journeying expenses when no journey was taken, presentation portraits, "suitable demonstrations" on the chairman's wedding-day, memorial keys, and the like.

The District Auditor has full power to disallow items and to surcharge those who directed any illegal or improper payment with the amount of the sum misspent. From his decision an appeal lies to the Board. As a rule, if the defaulting authority has made a *bonâ fide* mistake, the Board lets it off with a caution; but it is occasionally necessary for the Board to be strict. In 1904 the number of disallowances and surcharges reported by the District Auditors was no less than 3456.

Whatever view the reader may take as to the desirability of extending or curtailing the jurisdiction of the Board in other matters, there can surely be only one opinion as to the efficacy of an independent and

¹ *Tenth Report of the Local Government Board*, p. 43.

searching audit. Of all expedients for the preservation of public property it is the most simple, ready, and self-acting. The ratepayers are grateful for this central audit, for they know its value. Poor-law accounts have for a long time been audited by a central authority; but the extension of such an audit to other local bodies is of recent date. Municipal boroughs are still unfortunately exempt.

Urgent Need of Financial Control

This financial control is most valuable. And yet, in spite of all, our local expenditure and taxation steadily increase. In the year ending March 31st, 1903 (the latest period for which reliable information is at present available), the total amount expended for local purposes was £128,968,743! In 1868 it was only £30,240,000, and even that comparatively modest figure was then denounced by Mr. Goschen as "astounding." In order to meet the outlay for the year 1902-3, £50,328,412 was raised by means of rates; £35,271,367 was defrayed out of moneys borrowed for the purpose; the Treasury contributed £12,782,803; and the rest was raised from fines, tolls, dues, revenues from water, gas, electricity and tramway undertakings, and other sources of income. The total amount of the rates raised in England and Wales has increased in each year of the last decade. In the financial year 1885-86 it was £26,142,891; in the financial year 1895-96 it was £35,898,042, an increase of 38 per cent in 10 years. In the financial year 1902-3 it was, as above stated, £50,328,412. The rateable value of rateable property in England and

Wales steadily increases ; on Lady Day, 1903, it was £191,106,528. But in spite of this, the rate per pound steadily increases too. Taking an average all over England and Wales, it was, in round figures, in the year 1891-92, 3s. 8d. ; in 1892-93, 3s. 10d. ; in 1893-94, 4s. 0½d. ; in 1894-95, 4s. 2½d. ; in 1895-96, 4s. 5d. in the £ ; in 1900-1, 5s. 1d. in the £, and in 1902-3, 5s. 7½d. in the £. And yet at the same time the outstanding debt of our local bodies grows at the same rapid pace, much faster than the rate at which we reduce the National Debt. True, we have since 1874 paid £89,466,576 off the National Debt. But during the same period the local debt of England and Wales has been increased by £277,787,393 ! In 1875, it was £92,820,100 ; in 1884-5, £173,207,968 ; in 1894-5, £235,335,049 ; in 1902-3, £370,607,493 ; £135,272,444 being thus added in eight years, and £277,787,393 in twenty-eight years ! It is true that this debt must be paid off within periods of varying length—thirty, forty, or it may be sixty years. But new debts are constantly created which far outbalance any amount paid off.

The expenditure of our local authorities steadily increases ; the amount of the rates we pay steadily increases ; and at the same time the permanent outstanding debt of our local authorities steadily increases. Can nothing be done to remedy this state of things ?

We venture to make the following suggestions :—

1. The accounts of all our local bodies should be audited by the District Auditors of the Local Government Board. There is no doubt that elected auditors honestly try to do their duty. They are often, however, the personal friends of the leading members of the

authority whose accounts they are appointed to audit ; they have had, as a rule, no professional training as auditors, and do not possess the necessary legal knowledge to enable them to decide which items of expenditure are permissible and which are not. An auditor should combine the qualifications of both an accountant and a lawyer. He should satisfy himself that every contract entered into by a local authority is within the scope of the powers of that authority ; he should also carefully investigate the circumstances under which such contracts are entered into, with a view to checking extravagance. The audit should take place as soon as possible after the closing of the accounts which are to be audited. A salutary effect would be produced if surcharges imposed by auditors on those who deliberately apply public money to unauthorized purposes were more strictly enforced by the central authority.

2. Further restrictions should be placed upon the exercise by a local authority of its power to borrow money and of its right to apply to Parliament for borrowing powers behind the back of the Local Government Board.

3. Every local authority should prepare and publish an annual budget—a detailed estimate of its probable income and its probable expenditure during the coming year. At the close of the year it should prepare and publish a detailed account of the actual receipts and the actual expenditure of the year. This is done in many cases, but not in all. Every ratepayer should be able at any reasonable time to obtain a copy of both statements and should compare them. The accounts should be stated clearly in a simple form that will be readily

intelligible to those who provide the money which the local authority spends. The accounts relating to water, gas, and other undertakings in the hands of local authorities, which are or may be worked at a profit, should clearly show to what extent each such undertaking lessens or increases the rates.

APPENDIX A

TABLE,

taken from the Report of a Select Committee of the House of Commons on the Election of Poor-Law Guardians, dated July 18th, 1878.

(a) Dates of Election for different Authorities.

Town Councils—1st November.

Local Boards—First week in April.

Boards of Guardians—7th, 8th, and 9th April.

Highway Boards—25th March.

School Boards—Any time of the year.

Lighting Inspectors—Any time of the year.

Overscers—25th March.

(b) Scale of Voting.

Town Councils—Occupiers one vote.

Local Boards—As owners, one vote to six votes, according to rating, up to £250.

As occupiers, the same scale.

N.B.—Persons can vote in both capacities, and when rated up to £250 can have twelve votes.

Boards of Guardians—Owners and Occupiers respectively, according to same scale as Local Boards.

Burial Boards	.	} Occupiers, one vote to six votes up to £150, as pre- scribed by "Vestries Act, 1818."
Highway Boards	.	
Lighting Inspectors	.	
Overseers	.	

School Boards—One vote, which is cumulative.

(c) Tenure of Office.

Town Councils—Triennial ; one-third retiring each year.

Local Boards—Triennial ; one-third retiring each year.

Boards of Guardians	} Annual.
Highway Boards	
Lighting Inspectors	
Overseers	

Burial Boards—Triennial ; one-third retiring each year.

School Boards—Triennial ; all retiring together.

(d) Method of Election.

Town Councils—Ballot ; single vote.

Local Boards—Voting papers left at the house of voters, and collected in about three days ; plural voting.

Boards of Guardians—Voting papers left at the house of voter, and collected on following day ; plural voting.

Burial Boards	.	} Show of hands, and open poll, if demanded ; plural voting.
Highway Boards	.	
Lighting Inspectors	.	

Overseers as above, subject to confirmation by justices.

School Board—Ballot ; cumulative vote.

(e) Qualification of Candidates.

Town Councillors—In boroughs divided into four or more wards, £1000, or be rated on an annual value of not less than £30. In other boroughs £500, or rated at not less than £15.

Guardians—Varies from £15 rating to £40 rating in different unions.

Local Board—£15 rating where the population is under 20,000, and £30 rating where the population is over 20,000. Personal property without rating is available, provided the amount be £500 or £1000, according to the population.

Burial Boards	.	} Ratepayers.
Highway Boards	.	
Lighting Inspectors	.	
Overseers	.	

School Boards—No qualification.

Note.—Some places, *e.g.* South Wales, with respect to highways, are for certain purposes governed by special Acts; and in such cases the tables given above may be somewhat varied. In the Nottingham Union guardians are elected for three years.

See *ante*, p. 22.

APPENDIX B

SINCE the publication of this work in January 1907 many Acts of Parliament have been brought into operation, under which the powers and duties of the Central and Local Authorities, in relation to local government and public health and safety, have been extended. No change has, however, been made in the constitution of any of these Authorities. A short reference is made below to the effect of some of the statutes which, it is thought, contain provisions of special interest.

Cine-matograph Exhibitions.—The danger arising from the use of inflammable films led to the passing of the Cine-matograph Act, 1909, which contains provisions for securing the safety of the public.

Education.—It is now the duty of the Local Education Authority under Part III. of the Education Act, 1902, to provide for the medical inspection of children, and the Authority is given power to make such arrangements as may be sanctioned by the Board of Education for attending to the health, etc., of children educated in public elementary schools (Education (Administration Provisions) Act, 1907, s. 13). The Authority has power also to recover the cost of medical treatment so given from the parent unless he is unable by reason of circumstances, other than his own default, to pay the amount.

Food.—The Public Health (Regulations as to Food) Act, 1907, enables regulations to be made by the Local Government Board for the prevention of danger to public health

from the importation, storage, and distribution of articles of food unfit for human consumption.

Married Women.—The Qualification of Women (County and Borough Councils) Act, 1907, provides that a woman should not be disqualified by sex or marriage for being elected or being a councillor or alderman of the Council of any county or borough. Nevertheless, a married woman is not qualified to vote in the election of, or to be, a municipal borough councillor or a county councillor outside London.

Meals for Children.—The Education (Provision of Meals) Act, 1906 (6 Edw. VII. c. 57), empowers a local Education Authority to associate itself with a "School Canteen Committee" for providing meals for children in attendance at public elementary schools in its district. The Authority may aid such a Committee in the supply of meals by furnishing land, buildings, furniture, and apparatus, but not food, and by providing the necessary officers and servants. The Authority is required, where practicable, to recover a charge for such meals from the parents of the children supplied with them. Where the Authority resolves that the children are unable, by reason of the lack of food, to take full advantage of the education provided for them, and sufficient funds from other sources are not available, the Board of Education may authorise the Authority to defray the cost of providing food; but in no case may such cost in any financial year exceed the amount which would be produced by a rate of one halfpenny in the £ over the area of that Authority.

Port of London Authority.—This new Authority was established by the Port of London Act, 1908, for the purpose of taking over the undertakings of the London and India Docks Company and other Dock Companies, and of administering, preserving, and improving the Port of London.

Press.—Representatives of the press are to be admitted to the meetings of every Local Authority, unless the Authority, in the public interest, by resolution exclude them temporarily (Local Authorities (Admission of the Press to Meetings) Act, 1908). Meetings of a committee of a Local Authority do not fall within the operation of this statute.

Road Improvement.—Under the provisions of the Development and Road Improvement Funds Acts, 1909 and 1910, a Road Board was constituted and clothed with power, with the approval of the Treasury, out of funds provided for the purpose, (a) to make advances to county councils and other highway authorities in respect of the construction of new roads or the improvement of existing roads, and (b) to construct and maintain any new roads which appear to the Board to be required for facilitating road traffic.

Shops.—Important provisions, consolidating those of earlier Acts, are contained in the Shops Act, 1912. Extensive powers are conferred upon Local Authorities which enable them to regulate the closing of shops and the conditions of employment therein, so as to afford relief from the long business hours of the retail trader and to improve the position of the shop assistant.

Town Planning.—The provisions relating to this subject which are contained in Part II. of the Housing, Town Planning, etc., Act, 1909, are of a novel and far-reaching character. The interests of the owners of land likely to be used for building purposes are materially affected. The Local Government Board and the Local Authority are clothed with wide powers, in connection with town-planning schemes, as to any land which is in course of development, or appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience, in connection with the laying-out and use of the land and of any neighbouring lands.

INDEX

A

ADMINISTRATIVE COUNTY	194-216
of London	217-219, 224-228
ADOPTIVE ACTS	59, 230
ADULTERATION OF FOOD	139, 260-262
AGRICULTURAL RATES ACT	50, 250
AID-GRANT	159, 162
ALDERMAN, of a borough	72, 73, 78, 85, 86, 229
of the City of London	233-235
of a county	208, 224
of a guild	72
of a shire	17, 196, 197
ALDERMEN, Court of	233-235
ALFRED, KING	36, 221, 241
ALKALI ACTS	260
ALLOTMENTS	62, 141, 211
ANALYST, borough	88, 102, 260-262
county	139, 201, 207, 211
ANCIENT MONUMENTS PROTECTION ACT, 1900	213
ANCIENT PARISH	39-43
ANNUAL ASSEMBLY	59, 61
ANNUAL GRANTS TO SCHOOLS	158
ANNUAL REPORT OF THE LOCAL GOVERNMENT BOARD	256
ANNUAL RETURNS	255, 256
APPEAL, against a rate	50, 210
against a surcharge	120, 264
AREAS, of Local Government before 1888	14-16, 20, 21, 191
simplification of	28-30, 44, 45, 56, 57, 212
ASSESSMENT	50
ASSESSMENT COMMITTEE, of borough	116
of county	214

ASSISTANT OVERSEERS	50, 62
ASSIZE OF CLARENDON	197
ASSIZES	197, 211
ASYLUMS	237, 238
ATTENDANCE OFFICER	154
AUDIT	94, 118-120, 164, 232, 263-267
importance of strict	118, 264, 265
AUDITOR, district	118, 147, 164, 179, 213, 232,
.	256, 263, 264, 266
elective	84, 94, 266

B

BAILIFF	72, 222
BAILIWICK	194, 201
BAKEHOUSES	109, 143
BATHS	59, 141, 228, 230, 259
"BEST MEN"	36, 196, 199
BISHOP	42, 70, 194, 196, 198
BLIND CHILDREN SCHOOL	150, 165
BOARD OF AGRICULTURE AND FISHERIES	244-246
BOARD OF EDUCATION	153, 157, 158, 161, 163, 165,
.	166, 211, 246, 247
BOARD OF GUARDIANS	103, 108-120
accounts of	118-120
duties of	114-117
election of	109-113
supervision of the Local Government Board	118, 257
BOARD OF TRADE	243, 244, 248
BOARDING-OUT CHILDREN	115
BOROUGH	25, 69-102
aldermen	84-86, 229
audit	232
central control	102, 257
Commission of the Peace	99, 100
corporation	69, 73
council	84-95, 228
councillors	72, 81, 228, 229
counties of cities or towns	25, 95, 96
county	25, 96, 97
court	70, 71
creation of new	80, 81

BOROUGH—

different kinds of	25, 95-102
finance	91-95, 231
fund	91, 101
history of the	18, 70-80
justices	74, 78, 99, 100
mayor	229
metropolitan	228-232
officers	81, 231
parliamentary	82, 218
police force	100, 101
property	90
Quarter Sessions	25, 97-99
rate	92, 231
treasurer	87, 92, 94
BOROUGH FUNDS ACTS 1872 and 1903	92, 94

BORROWING POWERS—

of a borough	93, 94, 231
of a County Council	215, 216
of a District Council	146, 147
of an Education Authority	163, 164
of a Parish Council	63
of a School Board	155
of a union	116
sanction of the Local Government Board	262, 266

BOUNDARIES—

of boroughs	83
of counties	196, 200
of districts	121, 130, 131, 179
of parishes	44, 45, 48, 56, 57, 63, 259
of unions	20, 107, 108, 121
overlapping of	15, 16
rectification of	28-30, 45, 201

BRIDGE WITHOUT, ward of	223, 233
-----------------------------------	----------

BRIDGES	90, 140, 174, 175
-------------------	-------------------

BRIDLE-PATH	168, 185, 186
-----------------------	---------------

BUDGET, need for	33, 98, 267
----------------------------	-------------

BURH	17, 70
----------------	--------

BURIAL ACTS	47, 190, 191
-----------------------	--------------

BURIAL BOARDS	190-193, 228
-------------------------	--------------

BURIAL-FEE	67, 68
----------------------	--------

BURIAL-GROUNDS	190-193
BY-LAWS, defined	89
confirmation of	142, 148, 253
for attendance at school	154
of a County Council	210
of a District Council	141, 142
of a parish	39
of a Town Council	69, 89
of a township	36

C

CANAL BOAT ACTS	143, 252, 259
CANTEEN COMMITTEE, School	Addendum xi.
CELLAR-DWELLINGS	136
CEMETERIES	32, 90, 141, 189, 191, 193
CENTRAL CONTROL	240-268
necessity for	241, 248, 249, 257
over Boards of Guardians	117-120, 257
over boroughs	102, 257
over District Councils	147, 148, 257
proper limits of	118, 242, 264
value of audit	118, 264, 265
CENTRAL GOVERNMENT—	
contrasted with local	5-13
how affected by local	3, 13, 241, 256
<i>CERTIORARI</i>	95, 120, 252
CESSPOOL	135
CHAIRMAN, of Board of Guardians	113
of District Council	134
of London County Council	224
of Parish Council	61, 62
of Parish Meeting	59, 60
CHALMERS, MR.	14, 22, 30, 79, 218, 223
CHAMBERLAIN OF THE CITY OF LONDON	235
CHAOS, prior to 1888	14-16, 21, 22, 218, 223, 269-271
CHARITIES, parochial	63, 64
CHARTERS	43, 69, 71-75, 81
CHOLERA	122
CHURCH BUILDING ACTS	45
CHURCH RATES	66
CHURCHWARDENS	42, 48, 66-68, 104

CHURCHYARD	66, 67, 183, 189
CITY	83
CITY OF LONDON	70, 72, 79, 195, 220-224, 233-235
CITY REMEMBRANCER	234
CIVIL PARISH	44-50
CLERK, of District Council	135
of the Peace	98, 201
to borough justices	100
CODE, Education	153, 158
COINCIDENCE OF CUSTOM	36
COLLECTOR	178
COMMISSION OF THE PEACE	25, 99, 207
COMMISSIONERS, Baths and Washhouses	228
Library	228
of Sewers	124, 212, 234
COMMON COUNCIL, Court of	233-235
COMMON FUND, of rural district	144, 146
COMMON HALL, Court of	233-235
COMMON LAW	103, 124
COMMON LODGING-HOUSES	136, 225
COMMON POOR FUND, in Metropolis	237
COMMON, rights of	141, 212
COMMON SERJEANT	234
COMMONS ACT	141, 245
COMPULSORY EDUCATION	149-154, 156
COMPULSORY PURCHASE	62, 184, 211, 257
CONFIRMATION OF BY-LAWS	142, 148, 253
CONSCIENCE CLAUSE	151, 152, 160
CONSECRATION OF BURIAL-GROUND	191
CONSTABLE, chief	210
high	199
parish	54
police	100, 101, 200, 211
special	100
CONTAGIOUS DISEASES OF ANIMALS	102, 210, 245
CONTRIBUTORY PLACE	146
COPYHOLD COMMISSIONERS	244
CORN RETURNS	245
CORNWALL	202
CORONER, of borough	98, 102, 204
of City of London	234

CORONER—

of county	102, 203-206, 211
of franchise	204
CORPORATION, municipal	69, 70, 73, 83-102
sole	66
COUNCIL FOR TRADE AND PLANTATIONS	243
COUNTY	17, 27, 194-216
alderman	208
bridges	140, 175, 207
coroner	203-206
councillors	208, 209
divisions of	194, 199-201
electors	209
finance	213-216
fund	214, 215
officers of	201-210
police	54, 200, 207, 210, 211
rate	211, 214
stock	216
surveyor	174, 175, 201, 211
treasurer	201, 211, 215
COUNTY BOROUGH	25, 96, 97, 195, 209
COUNTY COUNCIL . 141, 173, 176, 182, 185, 187, 204, 208-216	
accounts of	213-216
debt of	216
duties of	210-213
election of	208-210
finance committee of	213, 215
income of	213
powers of	210-213
COUNTY COURT, ancient	17, 18, 197-199
modern	198
COUNTY DISTRICT	26, 121-148
COUNTY ELECTORS	209
COUNTY FUND ACCOUNT	215
COUNTY OF CITY OR TOWN	25, 95, 96, 195
COURT, baron	38
borough	70
leet	124
manorial	41, 42
of Quarter Sessions	25, 97

INDEX

281

COW-HOUSES	225
COWPER-TEMPLE CLAUSE	151, 160, 167
CREMATION	188
CUMULATIVE VOTE	9
<i>CUSTOS ROTULORUM</i>	203

D

DEATH-RATE, diminution in	128
DEDICATION TO THE PUBLIC	163, 169
DEPUTY-CORONER	205
DEPUTY-LIEUTENANT	203
DESTRUCTIVE INSECTS	210, 245
DISEASE, diminution of	128, 252
how spread	123, 128, 135, 137, 138
DISINFECTION	128, 135, 137, 146
DISPENSARIES	237
DISSENTERS	65, 66, 188, 211
DISTRICT	26, 121-148
DISTRICT AUDITOR	118-120, 147, 164, 179, 213, 232, 256, 263, 264, 266
DISTRICT BOARD, in Metropolis	223, 228
DISTRICT COUNCIL 23, 26, 110, 129-148, 171, 174, 183, 184, 212	
accounts of	147
by-laws of	142
central control over	147, 148, 257
constitution of	132-134
election of	132, 133
finance	143-147
loans to	146, 147
powers of	134-147
urban and rural	25, 26, 110, 131, 138
DISTRICT HIGHWAY BOARD	179
DISTRICT RATE	144, 145
DISTRICT SURVEYOR	179, 225
DIVERSION OF A HIGHWAY	169
DIVIDED PARISHES	20, 28, 29, 44, 259
DIVISIONS OF COUNTY	194, 193-201
DOGS, muzzling	245
DRAINS	135, 144
DRIFTWAY	168

E

EALDORMAN	17, 197, 221
EARL	196, 197
ECCLESIASTICAL PARISH	39, 40, 44, 45, 65-68
EDGAR, KING	196
EDUCATION	149-167
aid-grant	159, 162
area	26, 151, 153, 154
authority	160-167
board of 153, 157, 158, 161, 163, 165, 166, 211, 246, 247	
canteen committee	Addendum xi.
code	153, 158
committee	163
conscience clause	151, 152, 160
consultative committee	247
cost of	155-159, 164
Cowper-Temple clause	151, 160, 167
district	26, 151, 153, 154
elementary	149, 151-164
foundation managers	161
higher	159, 165, 166, 247
managers	161-167
religious	151, 152, 160, 162, 166, 167
School Boards	150-159
secondary	159, 165, 166, 247
Welsh	247
EDUCATION ACT, 1870	149, 151, 152
EDUCATION ACT, 1876	149
EDUCATION ACT, 1902	151, 159, 165
EDUCATION (LONDON) ACT, 1903	165
EDUCATION (PROVISION OF MEALS) ACT, 1906	Addendum xi.
EDUCATION BILL OF 1906	166, 167
ELECTRIC LIGHTING	148, 225, 244
ELEMENTARY EDUCATION	149, 151-164
ELEMENTARY EDUCATION ACTS	149-152, 159, 165
ELEMENTARY SCHOOL	151-164
EMIGRATION	33, 142
EMPLOYMENT OF CHILDREN ACT, 1903	213
ENCLOSURE COMMISSIONERS	244
ENCLOSURE OF COMMONS	141, 212, 245

EPIDEMIC	122, 128, 135, 254, 260
EXCHEQUER CONTRIBUTION	12, 101, 157, 213, 214, 227, 265
EXCHEQUER CONTRIBUTION ACCOUNT	139, 214
EXPENDITURE OF LOCAL BODIES	30-34, 265-268
suggestions for restricting	33, 266-268
EXPLOSIVES ACT	211, 219
EXTRA-PAROCHIAL PLACES	40, 44, 47

F

FACTORY ACTS	143, 150
FAIRS	142
FEE-GRANT	157
FINANCE, borough	91-95, 231
committee	213
county	213-216
district	143-147
local	30-34, 265, 268
London County Council	226-228
FIRE, inquest as to cause of	205
FIRE-BRIGADE	62, 223, 225, 227
FIRE-PLUGS	136
<i>FIRMA BURGI</i>	71
FISH, conservation of	210
FOOTPATHS	168, 184-186
FOUNDATION MANAGERS, School	161
FRANCHISES	204
FRANKPLEDGE	17
FREE EDUCATION	155-158
FREEMAN, of borough	58, 73, 76, 77, 82
of township	17
<i>FRITH-BORH</i>	17

G

GAME, dealers in	142
GANG MASTERS	142
GAOLS	4, 202
GAS, supply of	32, 90, 141, 225, 239
GENERAL BOARD OF HEALTH	126, 248
GENERAL DISTRICT RATE	144, 145, 231
GENERAL EXPENSES	145, 146
GENERAL ORDER	251

GENERAL RULE	251
GERMS.	123, 262
GILBERT'S ACT	107
GOVERNMENT GRANTS TO SCHOOLS	157, 158, 159
GRAND JURY	198
GUARDIANS OF THE POOR	25, 107-120, 214
additional	113
control of	118, 257
duties of	114-117
election of	109-113
<i>ex officio</i>	8, 25, 109, 110
in rural parishes	26
in urban districts	25
nominated, abolished.	236
GUILD	18, 71, 72

H

HACKNEY CARRIAGES	141, 253
HIGH-ROAD	168, 172
HIGH STEWARD	74
HIGHWAY	140, 168-187
accounts	179
areas	177
authorities	177
Board	140, 178-181
district	109
obstruction of	184-186
parish	47, 177, 178
public entitled to use whole width of	186
rate	178
repair of	170-184
traffic on	187
HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT	173, 180, 187, 253
"HOMAGE," of the manor	39
HOME SECRETARY	126, 239, 243, 250
"HOOTER"	259
HOSPITALS	137, 237, 254, 262
HOUSING OF THE WORKING CLASSES ACTS	90, 136, 259
HUNDRED	16, 26, 130, 199, 200, 241
HUNDRED-MOOT	17

I

IMPROVEMENT ACT DISTRICT	20, 125, 127, 129
INCORPORATION	69, 73, 80, 81
INDOOR RELIEF	107, 114, 115
INDUSTRIAL SCHOOLS	152, 210, 225, 236, 243
INEBRIATES ACT, 1898.	213
INFANT LIFE PROTECTION ACT	114, 117, 142, 226
INFECTIOUS DISEASE	123, 127, 128, 135, 137, 138, 237, 238
notification of	127, 128
INQUEST	205
INSPECTOR OF NUISANCES	139
INSPECTOR OF WEIGHTS AND MEASURES	207
INVALID CHILDREN SCHOOL	150, 156
ISLE OF ELY	194, 202
ISLE OF WIGHT	177, 194

J

JOINT-COMMITTEE	101, 112
JURY LIST	49
JUSTICE OF THE PEACE	199, 206-208
appointment of	74, 206
government of counties by	18, 19, 207
qualification of	206
JUSTICES IN EYRE	17, 197

K

KNACKERS' YARDS	142
KNIGHTS OF THE SHIRE	19

L

LAND COMMISSIONERS FOR ENGLAND	244
LEICESTER	72, 73, 76
LIBERTIES	195, 204, 238
LIBRARIES	33, 59, 90, 143
LICENSE IN MORTMAIN, explained	60
LICENSES	142, 210, 225, 239
LICENSING ACT, 1904	97
LIGHT RAILWAYS	244
LIVERYMEN	234

LOANS, increase in amount of	30-34, 266
to Boards of Guardians	116
to boroughs	91-94
to County Councils	215, 216
to District Councils	146, 147
to London County Council	224, 227
to Metropolitan Borough Councils	231
to Parish Councils	63
sanction of the Local Government Board	262, 263, 266
LOCAL AUTHORITIES, confusion prior to 1888	14, 15, 19-22, 218, 223, 269, 271
LOCAL AUTHORITIES (TREASURY POWERS) ACT, 1906	93
LOCAL BOARD OF HEALTH	126, 228
LOCAL EDUCATION AUTHORITY	160-167
LOCAL EXPENDITURE	30-34, 265-268
existing restrictions on	60, 63, 94, 262, 263
steady increase of	30-34, 265, 266
suggested further restrictions on	33, 266-268
LOCAL GOVERNMENT, defined	1
before 1888	14, 22
in Norman times	17
in Saxon times	16, 241
province of	2
LOCAL GOVERNMENT ACT, 1888	14, 23, 174, 176, 208
LOCAL GOVERNMENT ACT, 1894	14, 23, 54, 55, 64, 110, 187, 191, 212
LOCAL GOVERNMENT BOARD	248-265
advice given by	253-255
Annual Report of	256
audit by officer of	118, 147, 179, 213, 256, 263, 264, 266
auditor	118-120, 263
control by	102, 117-120, 257-265
control over local finance	262-268
creation of	249
functions of	251-265
legislative powers of	251-253
limits of such control	118, 242
officers of	250
returns	255, 256
value of control by	118, 241, 248, 249
LOCAL INQUIRIES	93, 212, 250, 254, 258

LOCAL INSTITUTIONS, development of	5, 6, 241
distinguished from political	5-13
influence on political	3, 13, 241, 256
necessity for central control	241, 248, 249, 257
value of	3, 242
want of symmetry in	5
LOCAL LOANS ACT	94, 147, 259, 263
LOCAL TAXATION ACT	214
LOCAL TAXATION RETURNS	94, 256
LONDON, City of	72, 217, 220-224, 233-235
County Council	224-228
County of	217-219
District Boards	223, 228
Education Authority in	236
history of	70, 72, 220-224
never in Middlesex	222
police	233, 239
port of	219, 233, 235
School Board	236
Vestries	223, 228
walls of	220, 222
LONDON GOVERNMENT ACT, 1899	14, 23, 69, 228, 232
LORD HIGH STEWARD	204, 238
LORD-LIEUTENANT	203
LORD MAYOR OF LONDON	72, 222, 233-235
LORD OF THE MANOR	17, 37-43, 186, 204
LUNATIC ASYLUMS	207, 210, 225, 227, 238

M

MAIN-DRAINAGE WORKS	223, 224, 227, 230
MAIN ROADS	140, 172
MALDON	76
MANAGERS, School	161-167
MANDAMUS	147, 254
MANOR	17, 37, 41, 42
MANOR COURT	41, 42
MARGARINE ACT	261
"MARK"	35
MARKETS	141, 219, 233, 253
V MARRIED WOMAN	9, 58, 61, 84, 112, 133, 163, 209, 210, 229

MAYOR	72, 73, 75, 86, 222, 231, 233-235
MAYOR'S COURT	234
MEALS, Provision of	Addendum xi.
MEDICAL OFFICER OF HEALTH	138, 139, 214
METROPOLIS, the	28, 154, 217-239
METROPOLIS MANAGEMENT ACT	217
METROPOLITAN ASYLUMS MANAGERS	219, 237, 238
METROPOLITAN BOARD OF WORKS	223, 224
METROPOLITAN BOROUGHES	228-232
aldermen	229
audit	232
councillors	228, 229
finance	231
mayor	229
officers	231
rate	231
METROPOLITAN POLICE	226, 238
METROPOLITAN POOR-LAW AUTHORITIES	236-238
METROPOLITAN VESTRIES	223, 228
METROPOLITAN WATER BOARD	239
MIDDLESEX	195, 202, 222
MILK	123, 246, 262
MINISTER	66, 67, 229
MONASTERIES, dissolution of the	43, 104
MORTALITY, decrease in	128
MORTMAIN, explained	60
MORTUARY	137
MOTOR-CARS	187, 213, 225, 250
MUNICIPAL CORPORATION	83-102
duties of	83-95
MUNICIPAL CORPORATIONS ACTS	79, 80, 81
MUSEUMS	33, 90
MUSIC-HALLS	225, 228

N

NATIONAL DEBT	32, 226
NECESSITOUS SCHOOLS	159
NEW PARISHES ACTS	45
NON-PROVIDED SCHOOL	161, 162
NOTIFICATION OF INFECTIOUS DISEASES	127, 128, 137

NUISANCES	2, 124, 136, 230
NUISANCES REMOVAL ACT	109, 136, 139

O

OFFICE OF WORKS	238
OFFICERS, of borough	87, 88, 231
of county	201-207
of County Council	211
of District Council	135, 138, 139
of parish	48, 59, 61
of union	113, 114
OPEN SPACES	63, 91, 225, 227
ORDERS OF LOCAL GOVERNMENT BOARD	111, 251-253
ORDNANCE SURVEY	245
OUTDOOR RELIEF	114, 115
OUTLAWRY	198
OVERHEAD WIRES	226
OVERSEERS OF THE POOR	43, 48-51, 104, 207, 215
OXFORD	83

P

PARENT	153, 156, 157
PARISH, the	24, 35-68
~~/~~ ancient	39-43
boundaries of	44, 45, 48, 56, 57, 63, 259
~~/~~ bound to repair highways	170-172
~~/~~ civil	43-55
~~/~~ constable	54
~~/~~ different kinds of	44-48
~~/~~ divided	20, 28, 29, 44, 259
~~/~~ ecclesiastical	65-68
highway	47
land-tax	47
meaning of the word	39, 40
poor-law	46, 47
rise of the	18, 24, 39-44
rural	21, 30, 57
urban	21, 23, 56
PARISH ACCOUNTS	42, 64
PARISH CHURCHYARD	67, 188, 189
PARISH CLERK	68

U

PARISH COUNCIL	24, 57, 60-64, 169, 172, 181, 185-187, 192, 212
PARISH MEETING	24, 56, 57-60, 169, 185-187, 192, 241
in ancient days	41, 42, 43
PARISH PRIEST	17, 40-43
PARISH PROPERTY	42, 59, 62, 109, 212, 259
PARKS.	32, 225, 227, 238
PARLIAMENTARY BOROUGH	82, 218
PARLIAMENTARY GRANTS TO SCHOOLS.	157, 158, 159
PAROCHIAL CHARITY	63, 64
PAROCHIAL ELECTORS	57, 61, 110, 112, 132, 229
PAUPERISM, cost of	115
increase of.	33, 115
methods of dealing with	33, 114, 115
PERAMBULATIONS	48
PETROLEUM.	142, 225
PETTY SESSIONAL DIVISIONS	200, 201, 206
PETTY SESSIONS.	207
PIECEMEAL LEGISLATION	21, 23, 218, 223
PINDAR	36
PLOUGH MONDAY	234
PLURAL VOTE	6, 7, 9, 53, 109
POLICE, borough	100, 101
county	54, 200, 207
City of London	233, 239
Metropolitan	226, 238
POLICE RATE	101, 211
POLL	53, 59, 62
POLLUTION OF STREAMS	124, 136, 210, 258, 259
POOR, Guardians of the	25, 107-120
relief of the	43, 103-120
POOR-LAW	43, 103-110, 248
POOR LAW AMENDMENT ACT	107, 248
POOR LAW BOARD	107, 108, 248
POOR-RATE	50, 51, 116
PORT-REEVE	70, 221
PORT SANITARY AUTHORITY	148, 233
POSTMASTER-GENERAL.	143
"PRICKING THE SHERIFFS"	202
PRISONS	4, 202
PRIVATE ACTS OF PARLIAMENT	93, 255, 263, 267
PRIVATE IMPROVEMENT RATE	144, 145

PRIVY COUNCIL	89, 126, 153, 243, 245, 250, 252
PROPERTY QUALIFICATION, abolished	8, 133
PROVIDED SCHOOL	161, 165
PROVISIONAL ORDER	230, 253
PUBLIC ELEMENTARY SCHOOL	151, 159, 161, 166
PUBLIC HEALTH ACTS	125-140, 250, 253
PUBLIC LIBRARIES	59, 90, 143
PUBLIC RIGHT OF WAY	168, 185
PUBLIC WORKS LOANS ACT	147, 260

Q

QUARTER SESSIONS	25, 97, 200, 204, 208
----------------------------	-----------------------

R

RAPE	122
RATE, borough	92, 231
county	211, 214
general district	144, 231
highway	178
lighting	231
parish	60, 63
police	101, 211
poor	50, 116, 256, 265
private improvement	144
school	155, 158, 164, 166
sewers	231
watch	101
RATEABLE VALUE	32
RATEPAYER, long-suffering	31, 33, 157, 267
RATING APPEALS	50, 210, 215
<i>RATIONE TENURAE</i>	170
RECORDER	25, 75, 78, 97
of London	233
RECREATION GROUND	59, 63, 141
RECTOR	42, 53, 66, 67
REEVE, of shire	17, 196, 201, 202
of township	36, 196, 199
REFORMATORIES	210, 225, 236
REFORMS SUGGESTED	33, 251, 257, 266-268
REGISTRAR OF BIRTHS AND DEATHS	116, 214, 237, 259
RELIEF OF THE POOR	43, 104, 114, 115, 251

RELIGIOUS INSTRUCTION . . .	151, 152, 160, 162, 166, 167
REMOVAL, of nuisances . . .	109, 127
of paupers . . .	105, 106
REPAIR OF A HIGHWAY . . .	170-184
REPRESENTATION, principle of . . .	5, 7-11, 19, 28, 207
REPUTED MANOR. . .	38
RETURNS, to Local Government Board . . .	255, 256
REVISING BARRISTER . . .	84
RIDING . . .	194
RIGHT OF WAY, public . . .	140, 168-187
RIOT . . .	200
RIVERS, pollution of . . .	124, 136, 210, 258, 259
ROADS . . .	168-187
disturnpiked . . .	173
high . . .	168, 172
main . . .	172, 175
not "taken over" . . .	171
turnpike . . .	173, 174
ROADSIDE WASTE . . .	140, 186, 187
RURAL DISTRICT. . .	21, 23, 30, 112, 130-148
RURAL DISTRICT COUNCIL . . .	26, 110, 113, 131, 138, 182
RURAL PARISH . . .	21, 80, 57, 212

S

SALE OF FOOD AND DRUGS ACTS . . .	88, 261
SANITARY DISTRICT . . .	121, 127, 130, 148
SANITARY LEGISLATION, history of . . .	122-129
SCARLET FEVER . . .	123, 128
SCHOOL—	
area . . .	26, 151, 153, 154, 218
blind, deaf, epileptic, or defective children . . .	150, 165
canteen committee . . .	Addendum xi.
district . . .	26, 151, 153, 154
elementary . . .	151-164
evening . . .	164
foundation managers . . .	161
Industrial . . .	152
invalid children . . .	150, 165
managers . . .	161-167
necessitous . . .	159
non-provided . . .	161, 162

SCHOOL—

provided	161, 165
voluntary	149, 159, 162
SCHOOL ATTENDANCE COMMITTEE	27, 151, 154, 160
SCHOOL BOARDS	23, 150-159, 236
SCHOOL FEES	155, 157
SCHOOL FUND	155
SCHOOL RATE	155, 158, 164, 166
SECONDARY EDUCATION	159, 165, 166, 247
SECONDARY OF THE CITY OF LONDON	234
SECULAR PRIEST	17, 40-43
SELECT VESTRY	53, 54, 223
SERF	36, 39, 71
SETTLEMENT, of pauper	105, 106, 114
SEWERS, defined	135
Commission of	124, 212, 234
control of	224
cost of	144, 146
rate	231
SEXTON	68
SHERIFF, of borough	75, 96
of county	17, 18, 196, 201, 202
of London	202, 235
of Middlesex	202, 222
SHIRE	16, 196-199
SHIRE-MOOT	17, 196-198
SHOPS REGULATION ACTS	213, 226
SINGLE RULE	251
SINKING-FUND	93, 216, 227
SKY-SIGNS	219, 226, 230
SLAUGHTER-HOUSES	225, 253, 263
SMALL DWELLINGS ACQUISITION ACT, 1899	91, 143, 213
SMALL-POX	128, 237
SOUTH WALES	177, 271
SOUTHWARK	222
SPECIAL CONSTABLES	100
SPECIAL EXPENSES	145, 146
SPECIAL SESSIONS	207
STEAM WHISTLE	259
STEWARD OF THE MANOR	38
STIPENDIARY MAGISTRATE	100

STOPPING A HIGHWAY	169, 184, 186
STREETS	141, 184, 225, 230, 262
SUBWAYS	225
SURCHARGE	119, 120, 264
SURVEYOR, county	174, 175, 201, 211
district	135, 225
of highways	140, 141, 178-183

T

"TAKING OVER" A HIGHWAY	171
TALLAGE	71
TAXES, distinguished from rates	11
THEATRES	225, 239
TITHE COMMISSIONERS	244
TITHING-MAN	36
TOLLS	75, 77, 144, 173, 213, 255
TOWN CLERK	88, 94, 231, 234
TOWN COUNCIL	83-102
duties of	85-95
election of	84, 85
TOWNSHIP	17, 35
TRAMWAYS	225, 226, 227
TREASURER, of borough	87, 92, 94
of county	201, 211, 215
of District Council	135
of Metropolitan borough	231
of union	120
TREASURY, contribution to local expenditure	12, 101, 144, 157, 213, 214
<i>TRINODA NECESSITAS</i>	16, 175
TRUANT SCHOOLS	236
<i>TUN</i>	36, 70
TURNPIKE ROADS	173, 174
TYPHOID FEVER	123, 254

U

UNDER-SHERIFF	202, 234
UNEMPLOYED WORKMEN ACT, 1905	91, 143, 213, 250
UNION, the	25, 103-120
UNION COUNTY	108
URBAN DISTRICT	21, 23, 110, 121, 130-148

URBAN DISTRICT COUNCIL	25, 110, 131-143, 174, 184
URBAN SANITARY AUTHORITY	127, 180, 181

V

VACCINATION	116, 128, 237, 260
VALUATION	50, 92, 145, 214
VESTRY	43, 51-54, 56, 223, 228, 230
common	52
select	53, 54, 223
VESTRYMEN, election of	53
VILL	37, 70
VILLEINS	38, 42
VOLUNTARY SCHOOLS	149, 159, 162

W

WALLASEY	122
WAPENTAKE	26, 122, 199
WARDS, of a borough	81
of a parish	59, 112, 132, 212
of the City of London	233, 234
WASHHOUSES	59, 141, 228, 230, 259
WATCH COMMITTEE	101
WATER BOARD, METROPOLITAN	239
WATER-SUPPLY	32, 89, 126, 136, 138, 146, 147, 225, 239
WAYWARDENS	179
WEIGHTS AND MEASURES	207, 211, 228
WENLOCK	74
WIGHT, Isle of	177, 194
WILD BIRDS, protection of	210
WINCHESTER	70, 220
WITENAGEMOTE	196
WOMEN, position of, in local affairs	9, 10, 58, 61, 68, 84, 112, 133, 163, 209, 210, 229
WORKHOUSES	108, 114, 257

THE END

"An important series of volumes on practical politics and legislation."—*Daily News*.

"In this series the public have the means of acquiring a great deal of information which it would be difficult to find in so convenient a form elsewhere."—*St. James's Gazette*.

The English Citizen:

A SERIES OF SHORT BOOKS ON

HIS RIGHTS AND RESPONSIBILITIES

EDITED BY SIR HENRY CRAIK, K.C.B., M.A. (OXON),
LL.D. (GLASGOW).

Crown 8vo.

THIS series is intended to meet the demand for accessible information on the ordinary conditions and the current terms of our political life.

The series deals with the details of the machinery whereby our Constitution works and the broad lines upon which it has been constructed.

The books are not intended to interpret disputed points in Acts of Parliament, nor to refer in detail to clauses or sections of those Acts; but to select and sum up the salient features of any branch of legislation, so as to place the ordinary citizen in possession of the main points of the law.

THE ENGLISH CITIZEN SERIES

THE ELECTORATE AND THE LEGISLATURE.

By Sir SPENCER WALPOLE, K.C.B. 2s. 6d.

THE LAND LAWS. By Sir F. POLLOCK, Bart.

2s. 6d.

THE STATE IN ITS RELATION TO EDUCATION.

By Sir HENRY CRAIK, K.C.B., M.A., LL.D. 2s. 6d.

THE STATE IN RELATION TO LABOUR. By

W. STANLEY JEVONS, LL.D., F.R.S. Fourth Edition.

Edited with an Introduction by FRANCIS W. HIRST.

2s. 6d.

THE NATIONAL DEFENCES. By Major-General

Sir F. MAURICE, K.C.B. 2s. 6d.

THE STATE AND CHARITY. By T. MACKAY.

2s. 6d.

LOCAL GOVERNMENT. By W. BLAKE ODGERS,

M.A., LL.D., K.C. Second Edition. By the Author

and E. J. NALDRETT. 3s. 6d.

THE STATE AND THE CHURCH. By the Hon.

ARTHUR ELLIOT. 2s. 6d.

THE STATE IN ITS RELATION TO TRADE

By Lord FARRER. With a Supplementary Chapter by

Sir ROBERT GIFFEN, K.C.B. 3s. 6d.

COLONIES AND COLONIAL FEDERATIONS. By

E. J. PAYNE. 3s. 6d.

CENTRAL GOVERNMENT. By H. D. TRAILL,

D.C.L. Revised by Sir HENRY CRAIK, K.C.B. 3s. 6d.

MACMILLAN AND CO., LTD., LONDON.



UNIVERSITY OF CALIFORNIA LIBRARY

THIS BOOK IS DUE ON THE LAST DATE
STAMPED BELOW

MAR 5 1917

MAR 27 1917

MAY 21 1919

APR 18 1925

YE 66702

284222

JS 3113

.03

1913

UNIVERSITY OF CALIFORNIA LIBRARY

